

THE GENERAL STATUTES OF NORTH CAROLINA

1975 SUPPLEMENT

**Completely Annotated, under the Supervision of the
Department of Justice, by the Editorial Staff
of the Publishers**

UNDER THE DIRECTION OF

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Volume 2B

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Preface

This Supplement to Replacement Volume 2B contains the general laws of a permanent nature enacted at the 1975 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1975 Cumulative Supplements thereto.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1975 Session of the General Assembly affecting Chapters 53 through 62 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 285 (p. 598)-288 (p. 121).
- North Carolina Court of Appeals Reports volumes 22 (p. 509)-26 (p. 535).
- Federal Reporter 2nd Series volumes 498 (p. 913)-518 (p. 32).
- Federal Supplement volumes 377 (p. 193)-396 (p. 256).
- Federal Rules Decisions volumes 63 (p. 230)-67 (p. 193).
- United States Reports volumes 415 (p. 605)-419 (p. 984).
- Supreme Court Reporter volume 95 (p. 2683).
- Opinions of the Attorney General.

The General Statutes of North Carolina 1975 Supplement

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ARTICLE 6.

Powers and Duties.

§ 53-62. Establishment of branches; tellers' windows and off-premises customer-bank communications terminals.

(d1) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to their use, maintenance and supervision, any bank may establish off the premises of any principal office, branch or teller's window a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or teller's window, and the capital requirements and standards for approval of a branch or teller's window, all as set forth in subsections (b) and (c) above, shall not be applicable to the establishment of any such off-premises terminal device or machine; provided, however, that no bank, savings and loan association, savings bank, credit union or any other financial institution which is not domiciled in North Carolina may establish in North Carolina any information processing device or machine described in this subsection.

(1975, cc. 553, 850.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added subsection (d1).

The second 1975 amendment, effective July 1, 1975, inserted "and the" preceding

"establishment and use of" near the middle of new subsection (d1) added by the first 1975 amendment.

As the rest of the section was not changed by the amendments, only subsection (d1) is set out.

ARTICLE 15.

North Carolina Consumer Finance Act.

§ 53-173. Maximum rate of charge; computation of charges; limitation on interest after judgment; limitation on interest after maturity of the loan; inapplicability of other sections. — (a) **Maximum Rate of Charge. —** Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding fifteen hundred dollars (\$1500) in amount, charges at rates not exceeding three percent (3%) per month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars (\$300.00) and one and one-half percent (1½%) per month on any remainder of such unpaid principal balance.

(1975, c. 110, s. 1.)

Editor's Note. —

The 1975 amendment substituted "three percent (3%)" for "two and one-half percent (2½%)" near the middle of subsection (a). The

amendatory act was ratified April 7, 1975, and made effective 30 days after ratification.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 53-173.2: Repealed by Session Laws 1975, c. 110, s. 2.

Editor's Note. — Session Laws 1975, c. 110, s. 3, provides that the act shall become effective

30 days after ratification. The act was ratified April 7, 1975.

§ 53-188. Review of regulations, order or act of Commission or Commissioner.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 53-189. Insurance. — (a) Credit life and credit accident and health insurance may be written in accordance with the provisions of "The North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

(b) The premium or cost of credit life, credit accident and health or property insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 25; 1975, c. 660, s. 2.)

Cross Reference. — For the North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, see § 58-341 et seq.

Editor's Note. — The 1975 amendment rewrote this section.

Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident

and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act. With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

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SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

ARTICLE 1.

Organization.

§ 54-12.1. **Merger of building and loan associations.** — Any two or more building and loan associations organized or to be organized, or existing under the laws of this State and operating under the provisions of this Subchapter, may merge into a single association which may be either one of said merging associations, and the procedure to effect such merger shall be as follows:

- (1) The directors, or a majority of them, of such associations as desire to merge, may, at separate meetings, enter into a written agreement of merger signed by them, and under the corporate seals of the respective associations, specifying each association to be merged and the association which is to receive into itself the merging association or associations, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. Such merger agreement may provide the manner and basis of converting or exchanging the shares in the association or associations so merged for shares of the same or a different class of the receiving association.

Editor's Note. — Subdivision (1) of this section is set out above to correct an error in the Replacement Volume.

ARTICLE 3.

Loans.

§ 54-21.2. Investments.

(b) Subject to such regulations and limitations as the Administrator of the Savings and Loan Division may prescribe, any such association is authorized and permitted to make any loan or investment permitted to be made by any federal savings and loan association by the Congress of the United States, Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation. All investments made by state-chartered savings and loan associations after 1958 and prior to May 26, 1975, shall for all purposes be considered to have been permitted investments if such investments were permitted to be made by federal savings and loan associations at the time they were made by a state-chartered savings and loan association.

(1975, c. 410.)

Editor's Note. — The 1975 amendment deleted "now or hereafter" preceding "permitted" near the middle of the first sentence and added the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

ARTICLE 4.

Under Control of Administrator of the Savings and Loan Division.

§ 54-24.1. Savings and Loan Commission. — (a) There shall be in the Department of Commerce a Savings and Loan Commission which shall consist of seven members. The members of the Savings and Loan Commission shall elect one of its members to serve as chairman of the Commission for such term as to be set forth in the bylaws of the Commission. The five members of the Savings and Loan Advisory Board, heretofore appointed by the Governor, shall continue as members of this Commission and shall serve their full terms and their successors shall be appointed in the same manner and for the same terms as was heretofore provided for members of the Savings and Loan Advisory Board. Upon July 14, 1971, and quadrennially thereafter, the Governor shall appoint a sixth and seventh member of the Commission whose term shall be for four

years. At least three members of the Commission shall be persons who have had experience in management of savings and loan associations.

Meetings shall be held regularly as fixed by the bylaws but special meetings may be had at any time upon call of the chairman, or any three members of the Commission. Members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this section as prescribed in G.S. 138-5.

(1975, c. 709, ss. 2, 3.)

Editor's Note. — The 1975 amendment, rewrote the second sentence of subsection (a) and inserted "and seventh" near the middle of the fourth sentence of that subsection.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 54-33.3. Certain powers of federal savings and loan associations granted to State associations. — In addition to all the powers granted under this Subchapter, any savings and loan association incorporated under the laws of this State and operating under the provisions of this Subchapter is herein authorized to:

- (2) Act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, as amended, if the funds of such trusts are invested only in savings accounts or deposits in such association or of obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary of each participant and shall show in proper detail all transactions engaged in under the authority of this section.

(1975, c. 55.)

Editor's Note. — The 1975 amendment inserted "or section 408(a)" following "section 401(d)" in the first sentence of subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

ARTICLE 7A.

Mutual Deposit Guaranty Associations.

§ 54-44.8. Powers of associations. — A guaranty association incorporated in accordance with the provisions of this Article may:

- (5) Invest any of its funds in:

- a. Bonds or interest-bearing obligations of the United States or for which the faith and credit of the United States are pledged for the payment of principal and interest;
- b. Bonds or interest-bearing obligations of this State;
- c. Farm loan bonds issued under the "Federal Farm Loan Act" and amendments thereto;
- d. Notes, debentures, and bonds of the federal home loan bank issued under the "Federal Home Loan Bank Act" and any amendments thereto;

- e. Bonds or other securities issued under the "Home Owners' Loan Act of 1933" and any amendments thereto;
- f. Securities acceptable to the United States to secure government deposits in national banks;
- g. Certificates of deposit of any financial institution that is subject to examination and supervision by the United States or by this State;
- h. Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina; provided, that said bonds or other evidences of indebtedness of such counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the North Carolina Municipal Council, Inc., of not less than 90 points out of 100 points.
- i. Stock in banking institutions licensed to do business in the State of North Carolina.

(1975, c. 528.)

Editor's Note. — The 1975 amendment added paragraph i to subdivision (5).

As the rest of the section was not changed by

the amendment, only the introductory language and subdivision (5) are set out.

SUBCHAPTER III. CREDIT UNIONS.

ARTICLE 9.

Credit Union Division; Administrator of Credit Unions.

§§ 54-74 to 54-75.1: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Cross Reference. — For present provisions as to supervision and regulation of credit unions, see §§ 54-109.10 to 54-109.17.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 10.

Incorporation of Credit Unions.

§§ 54-76 to 54-81: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Cross Reference. — For present provisions as to formation of credit unions, see §§ 54-109.1 to 54-109.6.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 11.

Powers of Credit Unions.

§§ 54-82 to 54-93: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Cross Reference. — For present provisions as to powers of credit unions, see §§ 54-109.21 to 54-109.31.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 12.

Shares in the Corporation.

§§ 54-94 to 54-97: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their

place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 13.

Members and Officers.

§§ 54-98 to 54-104: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Cross Reference. — For present provisions as to direction of the affairs of credit unions, see §§ 54-109.35 to 54-109.49.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 14.

Supervision and Control.

§§ 54-105 to 54-109: Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

Cross Reference. — For present provisions as to shares and accounts in credit unions, see §§ 54-109.53 to 54-109.61.

Editor's Note. — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

ARTICLE 14A.

Formation of Credit Union.

§ 54-109.1. Definition and purposes. — A credit union is a cooperative, nonprofit association, incorporated under Articles 14A to 14L of this Chapter, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition. (1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.2. Organization procedure. — (a) Any 12 or more residents of this State, of legal age, who have a common bond referred to in G.S. 54-109.26 may make application to organize a credit union and become charter members thereof by complying with this section.

(b) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:

- (1) The name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this State, and the location where the proposed credit union is to have its principal place of business;
- (2) That the existence of the credit union shall be perpetual;
- (3) The par value of the shares of the credit union, which shall be in five dollar (\$5.00) multiples, of not less than five dollars (\$5.00), nor more than twenty-five dollars (\$25.00);
- (4) The names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars (\$5.00); and
- (5) That the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(c) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with Articles 14A to 14L of this Chapter, and execute the same in duplicate.

(d) They shall select at least five qualified persons who agree to serve on the board of directors, and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the administrator of credit unions.

(e) The subscribers shall forward the required charter fee and an investigation fee, as prescribed by the Credit Union Commission, and the articles of incorporation and the bylaws to the Administrator of the Credit Union Division. The Administrator may issue a certificate of approval if the articles and the bylaws are in conformity with Articles 14A to 14L of this Chapter and

he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall issue to the corporation a certificate of approval, annexed to a duplicate certificate of incorporation and of the bylaws, which certificate of approval, together with the attached duplicate certificate of incorporation, shall be recorded in the office of the register of deeds of the county in which the office of such credit union is situated, and upon recordation of the incorporators shall become and be a corporation for the purposes set forth in this Article. The register of deeds of the county in which such recordation is made shall charge the same fee for such recordation as he is now allowed to charge for handling and recording a certificate of incorporation of a corporation organized under the business corporation laws of this State. The application shall be acted upon within 30 days. (1915, c. 115, ss. 2, 9; C. S., ss. 5210, 5211, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 4, 19; 1973, c. 199, s. 8; 1975, c. 538, s. 1.)

§ 54-109.3. Form of articles and bylaws. — In order to simplify the organization of credit unions, the Administrator of Credit Unions shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with Articles 14A to 14L of this Chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall provide:

- (1) The name of corporation.
- (2) The purposes for which it is formed.
- (3) Qualifications for membership.
- (4) The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.
- (5) The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors, and frequency of meetings.
- (6) The number of members of the credit committee, if any, their powers and duties.
- (7) The number of members of the supervisory committee, if any, their powers and duties.
- (8) The par value of shares of capital stock.
- (9) The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
- (10) The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.
- (11) The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have power to borrow funds.
- (12) The manner in which the funds of the corporation shall be invested.
- (13) The conditions upon which loans may be made and repaid.
- (14) The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.
- (15) The method of receipting for money paid on account of shares, deposits, or loans.
- (16) The manner in which the reserve fund shall be accumulated.
- (17) The manner in which dividends shall be determined and paid to members.

(18) The manner in which a voluntary dissolution of the corporation shall be effected.

(19) The manner in which the bylaws and articles of incorporation may be amended. (1915, c. 115, s. 2; C. S., s. 5211; 1975, c. 538, s. 1.)

§ 54-109.4. Amendments. — (a) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the Administrator of Credit Unions who shall approve or disapprove the amendments within 60 days.

(b) Amendments shall become effective upon approval in writing by the Administrator and no fee shall be charged for such approval. (1915, c. 115, s. 3; C. S., s. 5213; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 6; 1973, c. 1331, s. 3; 1975, c. 538, s. 1.)

§ 54-109.5. Use of name exclusive. — With the exception of a credit union organized under the provisions of Articles 14A to 14L of this Chapter or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, copartnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be guilty of a misdemeanor punishable by fine of not more than five hundred dollars (\$500.00) or imprisoned not more than one year, or both, and may be permanently enjoined from using such words in its name. (1915, c. 115, s. 4; C. S., s. 5214; 1925, c. 73, s. 3; 1935, c. 87; 1941, c. 236; 1975, c. 538, s. 1.)

§ 54-109.6. Office facilities. — (a) A credit union may maintain service facilities at locations other than its main office if the maintenance of such offices is reasonably necessary to furnish service to its members, subject to the approval of the Administrator of Credit Unions.

(b) A credit union may change its place of business within this State upon written notice to the Credit Union Division. Such a change shall be recorded in the office of the register of deeds where its office was located, and a second duplicate in the office of the register of deeds of the county in which the new office is to be located, if same is changed to another county. If the change is from one location to another in the same county, then only the Administrator of Credit Unions need be notified.

(c) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel. (1915, c. 115, ss. 9, 25; C. S., ss. 5215, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 7, 19; 1967, c. 823, s. 10; 1973, c. 199, s. 8; c. 1331, s. 3; 1975, c. 538, s. 1.)

§§ 54-109.7 to 54-109.9: Reserved for future codification purposes.

ARTICLE 14B.

Supervision and Regulation.

§ 54-109.10. Creation and supervision of Division. — There shall be established in the North Carolina Department of Commerce a Credit Union Division which shall be under the supervision of [the] Administrator of Credit Unions appointed by the Secretary of Commerce. The Credit Union Division and the Administrator of Credit Unions shall be under the general direction and supervision of the Secretary of Commerce, and there shall be such assistants

to the Administrator of Credit Unions as may be necessary and the salaries of the Administrator and assistants shall be fixed by the State Personnel Council. (1915, c. 115, s. 1; C. S., s. 5208; 1925, c. 73, s. 4; 1935, c. 87; 1965, c. 956, s. 1; 1971, c. 864, s. 17; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.11. Duties of Administrator. — The duties of the Administrator of Credit Unions shall be as follows:

- (1) To organize and conduct in the State Department of Commerce, a bureau of information in regard to cooperative associations and rural and industrial credits.
- (2) Upon request, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the State.
- (3) To maintain an educational campaign in the State looking to the promotion and organization of credit unions. Upon the written request of 12 bona fide residents of any particular locality in this State expressing a desire to form a local credit union at or in such locality, the Administrator of Credit Unions, or one of his assistants, shall proceed as promptly as may be convenient to such locality and make an investigation in order that the Administrator may determine whether or not a local credit union should be established according to the standards set forth and provided in this Article. The Administrator shall notify the applicants of his decision within 30 days after receipt of the written request. Before refusing the establishment of a credit union, the Administrator shall afford the applicants an opportunity to be heard therewith in person or by counsel and at least 60 days prior to the date set for a hearing on any such matter shall notify in writing the applicants of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in Article 33 of Chapter 143 of the General Statutes of North Carolina, as amended.
- (4) To examine at least once a year, and oftener if such examination be deemed necessary by the Administrator or his assistant, the credit unions formed under this Article. A report of such examination shall be filed with the State Department of Commerce, and a copy mailed to the credit union at its proper address.
- (5) The Administrator of Credit Unions is authorized, empowered, and directed to fix the amount of a blanket surety bond which shall be required of each credit union official, committee member and employee, irrespective of whether such official, committee member and employee receives, pays or has custody of money or other personal property owned by a credit union or in the custody or control of the credit union as collateral or otherwise. The surety on the bond shall be a surety company authorized to do business in North Carolina. Any such bond

or bonds shall be in a form approved by the Administrator of Credit Unions with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Administrator of Credit Unions may determine to be reasonably appropriate or as elsewhere required by the Chapter. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Administrator may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. The Administrator may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise or settlement of any claim or claims filed by a credit union with any surety or any surety company for less than the full amount of said claim or claims shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Administrator of Credit Unions and his advice thereon given or transmitted to the board of directors of said credit union. The following schedule shall be deemed as the minimum fidelity and faithful performance bond requirements only:

<i>Assets</i>	<i>Minimum Coverage</i>
\$ 0,000 to \$ 5,000	\$ 1,000
5,001 to 10,000	2,000
10,001 to 20,000	4,000
20,001 to 30,000	6,000
30,001 to 40,000	8,000
40,001 to 50,000	10,000
50,001 to 75,000	15,000
75,001 to 100,000	20,000
100,001 to 200,000	30,000
200,001 to 300,000	40,000
300,001 to 400,000	50,000
400,001 to 500,000	70,000
500,001 to 750,000	85,000
750,001 to 1,000,000	100,000

Over one million dollars (\$1,000,000) minimum amount, one hundred thousand dollars (\$100,000) plus fifty thousand dollars (\$50,000) for each additional million or fraction thereof of assets.

It shall be the duty of the board of directors of each credit union to provide proper protection to meet any circumstances by obtaining adequate bond (an insurance) coverage in excess of the above minimum schedule. The treasurer and all other persons handling credit union funds or records before entering upon his or their duties shall give a proper bond with good and sufficient surety, in an amount and character to be determined by the board in compliance with regulations conditioned upon the faithful performance of his or their trust.

The Administrator may require additional coverage for any credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage, and it shall be the duty of the board of directors of any credit union to obtain such additional coverage within 60 days after the date of written notice by the Administrator to such board of directors. For good cause shown,

the Administrator may extend the time to obtain additional coverage. (1915, c. 115, s. 1; C. S., s. 5209; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; 1957, c. 989, s. 1; 1965, c. 956, ss. 1-3; 1971, c. 864, s. 17; 1973, c. 199, ss. 1-3; c. 1331, s. 3; 1975, c. 538, s. 1.)

§ 54-109.12. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations. — In addition to any and all other powers, duties and functions vested in the Administrator of Credit Unions under the provisions of this Article, the Administrator of Credit Unions shall have general control, management and supervision over all corporations organized under the provisions of this Article. All corporations organized under the provisions of this Article shall be subject to the management, control and supervision of the Administrator of Credit Unions as to their conduct, organization, management, business practices and their financial and fiscal matters. The Administrator of Credit Unions may prescribe rules and regulations for the administration of this Article, as well as rules and regulations relating to financial records, business practices and the conduct and management of credit unions, and it shall be the duty of the board of directors and of the various officers of the credit union to put into effect and to carry out such regulations. (1915, c. 115, s. 7; C. S., s. 5237; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 6; 1965, c. 956, ss. 1, 22; 1975, c. 538, s. 1.)

§ 54-109.13. Revocation of certificate; liquidation. — If any such corporation shall neglect to make its annual report, as provided in this Article, or any other report required by the Administrator of Credit Unions for more than 15 days, or shall fail to pay the charges required, including the fines for delay in filing reports, the Administrator of Credit Unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for 15 days after such notice, the said Administrator shall, at his discretion, personally or by an agent appointed by him, take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided for in G.S. 54-109.93. (1915, c. 115, s. 7; C. S., s. 5240; 1925, c. 73, ss. 3, 8; 1935, c. 87; 1957, c. 989, s. 8; 1965, c. 956, s. 1; 1975, c. 538, s. 1.)

§ 54-109.14. Fees. — (a) Each credit union subject to supervision and examination by the Administrator of Credit Unions, including credit unions in process of voluntary liquidation, shall pay into the office of the Administrator of Credit Unions twice each year, in the months of January and July, supervision and examination fees.

The Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, shall, on or before December 1 of each year, determine and fix the scale of supervisory and examination fees to be assessed during the next calendar year. However, when the costs of any examination exceed the annual fees assessed and paid by the credit union, the Administrator of Credit Unions may, in his discretion, invoke the provisions of G.S. 54-109.16, giving due consideration to the time and expense incident to such examination, and the ability of the credit union to pay such additional fees. The additional fees, if assessed by the Administrator, in his discretion, shall be paid by each credit union promptly after the completion of the examination; provided that such additional fees shall not exceed the estimated cost of such examination.

No credit union shall be required to pay any supervisory fee until the expiration of 12 months from the date of the issuance of a certificate of incorporation to such credit union.

(b) Moneys collected under this section shall be deposited with the State Treasurer of North Carolina and expended, under the terms of the Executive Budget Act, to defray expenses incurred by the office of the Administrator of Credit Unions in carrying out its supervisory and auditing functions.

(c) All revenue derived from fees will be placed into a special account to be administered solely for the operation of the Credit Union Division. (1915, c. 115, s. 7; C. S., s. 5238; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, s. 7; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1.)

§ 54-109.15. Reports. — (a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied by him for that purpose. Additional reports may be required.

(b) Any such corporation which neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall forfeit to the Administrator of Credit Unions five dollars (\$5.00) for each day such neglect continues; and, furthermore, the Administrator of Credit Unions shall have authority, in his discretion, to revoke the certificate of incorporation and take possession of the assets and business of any corporation failing to pay the fees required in this section after serving notice of at least 15 days upon such corporation of his intention so to do. (1915, c. 115, s. 7; C. S., ss. 5238, 5240; 1925, c. 73, ss. 3, 7, 8; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, ss. 7, 8; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1.)

§ 54-109.16. Annual examinations required; payment of cost. — The Administrator of Credit Unions shall cause every such corporation to be examined once a year and whenever he deems it necessary. The examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to the corporation; and for the purpose of such examination the Administrator shall have power and authority to subpoena and examine personally, or by one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether such documents are documents of the corporation or not. Whenever the cost of making the annual examination exceeds the annual fees paid by the credit union to the State, the Administrator may charge the credit union the cost per day, per man for each day required to complete the examination. The Administrator may designate an independent auditing firm to do the work under his direction and supervision, with the cost to be paid by the credit union involved. (1915, c. 115, s. 7; C. S., s. 5239; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 25; 1969, c. 69, ss. 7, 8; 1975, c. 538, s. 1.)

§ 54-109.17. Records. — (a) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the Administrator from time to time prescribes. In prescribing such rules, the Administrator shall consider the relative size of a credit union and its reasonable capability of compliance.

(b) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the Administrator.

(c) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union. (1973, c. 98, s. 1; 1975, c. 538, s. 1.)

§§ 54-109.18 to 54-109.20: Reserved for future codification purposes.

ARTICLE 14C.

Powers of Credit Union.

§ 54-109.21. **General powers.** — A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) At the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) Receive savings from its members in the form of shares, deposits, or special-purpose thrift accounts;
- (7) Lend its funds to its members as hereinafter provided;
- (8) Borrow from any source in accordance with policy established by the board of directors;
- (9) Discount and sell any eligible obligations, subject to rules and regulations prescribed by the Administrator;
- (10) Sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator of Credit Unions;
- (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- (12) Make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies and central-type credit union organizations;
- (13) Assess charges to members in accordance with the bylaws for failure to meet properly their obligations to the credit union;
- (14) Hold membership in other credit unions organized under Articles 14A to 14L of this Chapter or other acts, and in other associations and organizations composed of credit unions;
- (15) Declare dividends; pay interest on deposits and pay interest refunds to borrowers as provided in Articles 14A to 14L of this Chapter;
- (16) Sell travelers checks and money orders and charge a reasonable fee for such services, provided the instruments are payable at institutions other than a credit union;
- (17) Perform such tasks and missions as are requested by the federal government or this State or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with Articles 14A to 14L of this Chapter;
- (18) Act as fiscal agent for and receive deposits from the federal government, this State, or any agency or political subdivision thereof;

- (19) Contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership subject to such regulations as are prescribed by the Administrator;
- (20) Make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Administrator;
- (21) Act as a custodian of qualified pension funds if permitted by federal law;
- (22) Purchase or make available insurance for its directors, officers, agents, employees, and members; and
- (23) Facilitate its members' purchase of goods and services in a manner which promotes the purposes of the credit union.
- (24) The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this Article or of the bylaws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal shall be paid to such member, but in the order of expulsion or withdrawal, and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation. (1915, c. 115, ss. 5, 16, 17, 23; C. S., ss. 5216-5218, 5231; 1925, c. 73, ss. 3, 10; 1935, c. 87; 1965, c. 956, s. 8; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.22. Incidental powers. — A credit union may exercise such incidental powers such as are necessary or requisite to enable it to promote and carry on most effectively its purposes. (1975, c. 538, s. 1.)

§§ 54-109.23 to 54-109.25: Reserved for future codification purposes.

ARTICLE 14D.

Membership.

§ 54-109.26. **"Membership" defined.** — (a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid any required entrance fee or membership fee, or both, have subscribed for one or more shares, and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(b) Credit union membership may include groups having a common bond of similar occupation, association or interest, or groups who reside within an identifiable neighborhood, community, or rural district, or employees of a common employer, and members of the immediate family of such persons. (1915, c. 115, s. 6; C. S., s. 5230; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 18; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.27. **Societies and other associations.** — Societies, and copartnerships composed primarily of individuals who are eligible to membership, and corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings. (1975, c. 538, s. 1.)

§ 54-109.28. **Other credit unions.** — Any credit union organized under Articles 14A to 14L of this Chapter may permit membership of any other credit union organized under Articles 14A to 14L of this Chapter or other acts. (1975, c. 538, s. 1.)

§ 54-109.29. **Members who leave field.** — Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors. (1975, c. 538, s. 1.)

§ 54-109.30. **Liability of shareholders.** — A shareholder of any such corporation, unless the bylaws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed. (1975, c. 538, s. 1.)

§ 54-109.31. **Meetings of members.** — (a) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(b) At all such meetings, a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(c) A society, association, copartnership or corporation having membership in the credit union may be represented and have its vote cast by one of its members

or shareholders, provided such person has been fully authorized by the organization's governing body.

(d) The board of directors may establish a minimum age of 16 years of age as a qualification to vote at meetings of the members.

(e) The board of directors may establish a minimum age of 18 years of age as a qualification to hold office. (1975, c. 538, s. 1.)

§§ 54-109.32 to 54-109.34: Reserved for future codification purposes.

ARTICLE 14E.

Direction of Affairs.

§ 54-109.35. Election or appointment of officials. — (a) The credit union shall be directed by a board of directors, at least five in number, to be elected at the annual members' meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(b) The board of directors at its first meeting after its election shall appoint a supervisory committee from the membership (no more than one of whom may be a member of the board of directors and none a member of the credit committee) of not less than three members who shall serve for such terms as may be fixed by the bylaws; or in lieu thereof, the bylaws may authorize the board of directors to employ and use such clerical and auditing assistants as may be required to perform the duties required by G.S. 54-109.49. The board of directors may remove or suspend any member of the supervisory committee for neglect of duty, misfeasance, malfeasance, official misconduct, or for other good cause shown.

(c) The board of directors shall appoint a credit committee from the membership consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, appoint one or more loan officers from the membership and, in such instances, duties and responsibilities of the credit committee shall be carried out by such loan officer or officers. (1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.36. Record of board and committee members. — Within 15 days following the board of directors' initial or annual organization meeting, a record of the names and addresses of the members of the board, committees and all other officers of the credit union shall be filed with the Credit Union Division on forms provided by that Division. (1975, c. 538, s. 1.)

§ 54-109.37. Vacancies. — The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees. (1975, c. 538, s. 1.)

§ 54-109.38. Compensation of officials. — No member of the board of directors or of the credit committee or supervisory committee shall be

compensated for his service in this position, but providing reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business. (1975, c. 538, s. 1.)

§ 54-109.39. Conflicts of interest. — No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested. (1975, c. 538, s. 1.)

§ 54-109.40. Executive officers. — (a) At their organization meeting and within 30 days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice-chairman of the board or one or more vice-presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(b) The terms of the officers shall be one year, or until their successors are chosen and have duly qualified.

(c) The duties of the officers shall be prescribed in the bylaws.

(d) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union. (1975, c. 538, s. 1.)

§ 54-109.41. Authority of directors. — The board of directors shall have the general direction of the business affairs, funds, and records of the credit union. (1975, c. 538, s. 1.)

§ 54-109.42. Executive committee. — From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board. (1975, c. 538, s. 1.)

§ 54-109.43. Meetings of directors. — The board of directors and the executive committee shall meet as often as the bylaws prescribe. (1915, c. 115, s. 8; C. S., s. 5232; 1975, c. 538, s. 1.)

§ 54-109.44. Duties of directors. — It shall be the duty of the directors to:

- (1) Act upon applications for membership or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board;
- (2) Purchase a blanket fidelity bond, in accordance with any rules and regulations of the Administrator, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law or other agent;

- (3) Determine from time to time the interest rate or rates consistent with Articles 14A to 14L of this Chapter, which shall be charged on loans and to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;
- (4) Fix from time to time the maximum amount which may be loaned to any one member;
- (5) Declare dividends on shares in the manner and form as provided in the bylaws; and determine the interest rate or rates which will be paid on deposits;
- (6) Set the number of shares and the amount of deposits which may be owned by a member, such limitations to apply alike to all members;
- (7) Have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;
- (8) Authorize the employment of such persons necessary to carry on the business of the credit union;
- (9) Authorize the conveyance of property;
- (10) Borrow or lend money to carry on the functions of the credit union;
- (11) Designate a depository or depositories for the funds of the credit union;
- (12) Suspend any or all members of the credit or supervisory committee for failure to perform their duties;
- (13) Appoint any special committees deemed necessary; and
- (14) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with Articles 14A to 14L of this Chapter and not specifically reserved by the bylaws for the members. (1915, c. 115, s. 10; C. S., s. 5234; 1957, c. 989, s. 5; 1965, c. 956, s. 20; 1973, c. 199, s. 9; 1975, c. 538, s. 1.)

§ 54-109.45. Authority of credit committee. — The credit committee shall have the general supervision of all loans to members. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

§ 54-109.46. Meetings of credit committee. — The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

§ 54-109.47. Loan officers. — (a) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(b) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

§ 54-109.48. When credit committee dispensed with. — The credit committee may be dispensed with, and loan officer(s) empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the

event the credit committee is dispensed with, the procedures prescribed in G.S. 54-109.45, 54-109.46 and 54-109.47 do not apply, and no loans shall be made unless approved by the loan officer(s). (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

§ 54-109.49. Duties of supervisory committee. — The supervisory committee shall make or cause to be made an annual audit, in accordance with rules and regulations promulgated by the Administrator of Credit Unions, and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union. The supervisory committee shall make or cause to be made such supplemental audits as deemed necessary by it or as may be ordered by the Administrator of Credit Unions. Any violation of this Article or of the bylaws or of any practice of the corporation which in the opinion of the supervisory committee is unsafe, unsound, or unauthorized, shall be reported to the board of directors and the Administrator of Credit Unions within seven days after its discovery. (1915, c. 115, s. 12; C. S., s. 5236; 1965, c. 956, s. 21; 1973, c. 199, s. 11; 1975, c. 538, s. 1.)

§§ 54-109.50 to 54-109.52: Reserved for future codification purposes.

ARTICLE 14F.

Savings Accounts.

§ 54-109.53. Shares. — (a) The capital of a credit union consists of the payments made by members on shares, undivided surplus, and reserves.

(b) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.

(c) A certificate need not be issued to denote ownership of a share in a credit union. (1915, c. 115, s. 13; C. S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.54. Dividends. — The board of directors of any credit union may declare dividends as its bylaws provide. Dividends shall be paid on fully paid shares outstanding at the close of the accounting period, but shares which become fully paid by the tenth of any month of the period may be entitled to a proportional part of such dividend, calculated from the first day of the month. (1915, c. 115, s. 22; C. S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3; 1965, c. 956, s. 15; 1969, c. 69, ss. 3, 4; 1973, c. 199, s. 7; 1975, c. 538, s. 1.)

§ 54-109.55. Deposits. — A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the bylaws shall provide. (1915, c. 115, s. 16; C. S., s. 5217; 1925, c. 73, s. 3; 1935, c. 87; 1975, c. 538, s. 1.)

§ 54-109.56. **Thrift accounts.** — Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors. (1975, c. 538, s. 1.)

§ 54-109.57. **Shares and deposits for minors and in trust.** — Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives. (1915, c. 115, s. 14; C. S., s. 5227; 1975, c. 538, s. 1.)

§ 54-109.58. **Joint accounts.** — (a) A member may designate any person or persons to hold shares, deposits and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(b) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all. (1975, c. 538, s. 1.)

§ 54-109.59. **Liens.** — The credit union shall have a lien on the shares, deposits and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him. (1915, c. 115, s. 13; C. S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

§ 54-109.60. **Dormant accounts.** — (a) If a credit union member's account be without activity for a period of two years, the account may be declared dormant and 60 days subsequent to written notification to the member, which would be by statement or letter, be transferred to the reserve fund of the credit union.

(b) The member may reclaim any such sums by proper judicial proceedings commenced within 10 years after such action of the board of directors.

(c) This section does not apply to shares, deposits, accounts, dividends, interest and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any of such persons in the manner and during the period specified in subsection (a). (1975, c. 538, s. 1.)

§ 54-109.61. **Reduction in shares.** — (a) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the members present at a special meeting called for that purpose order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(b) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction. (1975, c. 538, s. 1.)

§§ 54-109.62 to 54-109.64: Reserved for future codification purposes.

ARTICLE 14G.

Loans.

§ 54-109.65. Purposes, terms and interest rate. — A credit union may loan to its members for such purpose and upon such security and terms as the board of directors prescribe, at rates of interest not exceeding twelve [percent] (12%) annual percentage rate, unless a greater rate not to exceed eighteen [percent] (18%) annual percentage rate is otherwise approved by the Credit Union Commission. Such action by the Commission will be uniform and apply to all credit unions.

The term "interest," as used in this section, shall not be deemed to include charges made by a credit union for appraisals of real or personal property; attorneys' fees for searching title to real property, preparing notes, deeds of trust, mortgages and closing loans; and recording fees. Rate of interest and terms of repayment shall appear on each note but the corporation may, for the purpose of making loans, discount and negotiate promissory notes and deduct in advance, from the proceeds of such loan, interest at a rate not to exceed the rate herein fixed, which shall be the legal rate for corporations organized under this Article, and such deductions shall be made upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in such installments. (1915, c. 115, ss. 19, 20; 1917, c. 232, s. 4; C. S., ss. 5220, 5221; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1957, c. 989, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, ss. 5, 6; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.66. Application. — Every application for a loan shall be made in writing upon a form, which the board of directors prescribe. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document. (1975, c. 538, s. 1.)

§ 54-109.67. Loan limit. — No loan shall be made to any member in an aggregate amount in excess of two hundred dollars (\$200.00), or ten percent (10%) of the credit union's unimpaired capital and surplus, whichever is greater, provided that no unsecured loan shall be greater than five thousand dollars (\$5,000). (1915, c. 115, s. 19; 1917, c. 232, s. 4; C. S., s. 5220; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, s. 5; 1975, c. 538, s. 1.)

§ 54-109.68. Security. — In addition to generally accepted types of security, the endorsement of a note by a surety, comaker or guarantor, or assignment of shares, in a manner consistent with the laws of this State, shall be deemed security within the meaning of Articles 14A to 14L of this Chapter. The adequacy of any security shall be determined by the board of directors subject to Articles 14A to 14L of this Chapter and the bylaws. (1975, c. 538, s. 1.)

§ 54-109.69. **Installments.** — A member may receive a loan in installments, or in one sum, and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business. (1975, c. 538, s. 1.)

§ 54-109.70. **Line of credit.** — A line of credit and advances may be granted to each member within guidelines established by the board of directors. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such line of credit. (1975, c. 538, s. 1.)

§ 54-109.71. **Other loan programs.** — (a) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and State government.

(c) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members. (1975, c. 538, s. 1.)

§§ 54-109.72 to 54-109.74: Reserved for future codification purposes.

ARTICLE 14H.

Insurance and Group Purchasing.

§ 54-109.75. **Insurance for members.** — (a) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, deposits or loan balances or to any combination of them.

(b) A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of insurance including, but not by way of limitation, life insurance, disability insurance, accident and health insurance, property insurance, liability insurance, and legal expense insurance. (1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.76. **Liability insurance for officers.** — A credit union may purchase and maintain liability insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability. (1975, c. 538, s. 1.)

§ 54-109.77. **Group purchasing.** — A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of such goods and services as are in the interest of improving economic and social conditions of the members. (1975, c. 538, s. 1.)

§ 54-109.78. Share and deposit insurance. — (a) All credit unions established under this Chapter shall, no later than July 1, 1976, apply for insurance of member share and deposit accounts from any mutual deposit guaranty association which qualifies under Article 7A of Chapter 54 of the General Statutes (Mutual Deposit Guaranty Associations), or from the National Credit Union Administration under the Federal Credit Union Act. All such credit unions shall, on or before January 1, 1977, obtain and thereafter maintain the above-mentioned insurance. A credit union which is unable to obtain a commitment for insurance of the share and deposit accounts within the time limit specified above shall be dissolved by action of the Administrator of Credit Unions or permitted to merge with another credit union. Provided, the Administrator may grant additional time to obtain the insurance commitment, upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Granting of additional time or times to obtain the insurance commitment shall not extend later than January 1, 1978.

(b) All credit unions chartered under Articles 14A to 14L of this Chapter after ratification shall apply for and obtain insurance as a condition to granting the charter. (1975, c. 538, s. 1.)

§§ 54-109.79 to 54-109.81: Reserved for future codification purposes.

ARTICLE 14-I.

Investments.

§ 54-109.82. Investment of funds. — The capital, deposits, undivided profits and reserve fund of the corporation may be invested in any of the following ways, and in such ways only:

- (1) They may be lent to the members of the corporation in accordance with the provisions of this Chapter.
- (2) In capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are confined or restricted to credit unions or organizations of credit unions, or provided the purposes for which such agency or association is organized or designed to service or otherwise assist credit union operations.
- (3) In obligations of the State of North Carolina or any subdivision thereof.
- (4) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States.
- (5) They may be deposited to the credit of the corporation in savings banks, credit unions, savings and loan associations, State banks or trust companies incorporated under the laws of the State, or in national banks located therein.
- (6) In loans to other credit unions in any amount not to exceed twenty-five percent (25%) of the shares and unimpaired surplus of the lending credit union.
- (7) In an aggregate amount not to exceed twenty-five percent (25%) of the allocations to the reserve fund in any agency or association of the type described in subdivision (2) hereof, provided the purposes of any such

- agency or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations.
- (8) In the North Carolina Savings Guaranty Corporation.
 - (9) They may be placed on time deposits in any banks insured by the Federal Deposit Insurance Corporation or may be deposited or may be invested in any savings or building and loan association insured by the Federal Savings and Loan Insurance Corporation.
 - (10) Debentures which are issued by an agency of the United States government. (1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3; C. S., s. 5219; 1925, c. 73, ss. 12, 13, 14; 1935, c. 87; 1939, c. 400, s. 1; 1947, c. 781; 1965, c. 956, ss. 10, 11; 1969, c. 69, s. 1; 1973, c. 199, s. 4; c. 1255, s. 1; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§§ 54-109.83 to 54-109.85: Reserved for future codification purposes.

ARTICLE 14J.

Reserve Allocations.

§ 54-109.86. **Transfers to regular reserve.** — (a) Immediately before the payment of each dividend, but more often if the board of directors so determine, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve in accordance with the following schedule:

- (1) Ten percent (10%) of gross income until the regular reserve shall equal seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, then
- (2) Five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total of outstanding loans and risk assets.

(b) Subsequent to attainment of the reserve goals of ten per centum (10%) or seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, as the case may be, the regular reserve shall be replenished by regular contributions in such amounts as may be needed to maintain the reserve goals of seven and one-half per centum (7½%) or ten per centum (10%).

(c) In addition to such regular reserve, special reserves to protect the interests of members shall be established:

- (1) When required by regulations; or
- (2) When found by the Administrator, in any special case, to be necessary for that purpose.

(d) Nothing in this section shall be construed as limiting the amount that a credit union may set apart to its reserve fund. (1915, c. 115, s. 21; C. S., s. 5222; 1939, c. 400, s. 2; 1955, c. 1135, s. 1; 1969, c. 69, ss. 2, 10; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.87. Use of regular reserve. — The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

§ 54-109.88. "Risk assets" defined. — For the purpose of establishing the reserves required by G.S. 54-109.86, all assets except the following shall be considered risk assets:

- (1) Cash on hand.
- (2) Deposits and shares in federal or state banks, savings and loan associations, and credit unions.
- (3) Assets which are issued by, fully guaranteed as to principal and interest by, or due from the U.S. government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.
- (4) Loans to other credit unions.
- (5) Loans to students insured under the provision of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs.
- (6) Loans insured under Title I of the National Housing Act (12 U.S.C. 1703) by the Federal Housing Administration.
- (7) Shares or deposits in central credit unions organized under Article 14-I of this Chapter of any other State act or of the Federal Credit Union Act.
- (8) Common trust investments which deal in investments authorized by Articles 14A to 14L of this Chapter.
- (9) Prepaid expenses.
- (10) Accrued interest on nonrisk investments.
- (11) Furniture and equipment.
- (12) Land and buildings.
- (13) Loans secured by shares.
- (14) Deposits in mutual savings guaranty associations which qualify under Article 7A of Chapter 54 of the General Statutes. (1975, c. 538, s. 1.)

§§ 54-109.89 to 54-109.91: Reserved for future codification purposes.

ARTICLE 14K.

Change in Corporate Status.

§ 54-109.92. Suspension. — (a) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated Articles 14A to 14L of this Chapter, or is operating in an unsafe or unsound manner, the Administrator of Credit Unions shall issue an order temporarily suspending the credit union's operations for not more than 90 days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the

reasons for such suspension, and/or a list of the specific violations of Articles 14A to 14L of this Chapter. The Administrator of Credit Unions shall also notify the members of the Credit Union Commission of any suspension.

(b) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the Administrator. The board of directors shall then file with the Administrator a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the Administrator may revoke the suspension notice, permit the credit union to resume normal operations, and notify the Commission of such action.

(d) If the Administrator, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(e) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the Administrator may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union. (1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

§ 54-109.93. Liquidation. — (a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(c) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the Administrator of Credit Unions thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the Administrator in writing as to whether or not the members approved the proposed liquidation.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(e) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. Where authorization

for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(f) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(g) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidating including any surety bond that may be required; second, any liability due nonmembers; third, deposits and special purpose thrift accounts as provided in Articles 14A to 14L of this Chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(h) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the Administrator of Credit Unions shall issue to such corporation, in duplicate, a certificate of dissolution which shall be filed by the corporation in the office of the register of deeds of the county in which the corporation has its place of business. The corporation shall then be dissolved and its certificate of incorporation revoked. All pertinent books and records of the liquidating credit union shall be retained by the liquidating agent and/or filed with the Credit Union Division and kept for a minimum period not to exceed five years. The liquidating agent's fee, if any, shall be set by the Administrator of Credit Unions. (1915, c. 115, s. 24; C. S., s. 5224; 1925, c. 73, ss. 3, 15; 1935, c. 87; 1957, c. 989, s. 4; 1965, c. 956, s. 1; 1967, c. 823, s. 11; 1975, c. 538, s. 1.)

§ 54-109.94. Merger. — Any credit union may, with the approval of the Administrator of Credit Unions, merge with another credit union subject to the rules and regulations set forth by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

§ 54-109.95. Conversion of charter. — (a) A credit union chartered under the laws of this State may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the Administrator of the Credit Union Division.

(b) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this State. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the Administrator of Credit Unions and file proof of such compliance with said Administrator. (1965, c. 956, s. 9; 1975, c. 538, s. 1.)

§§ 54-109.96 to 54-109.98: Reserved for future codification purposes.

ARTICLE 14L.

Taxation.

§ 54-109.99. Restriction of taxation. — The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt building and loan associations or

institutions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this Article, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another. (1915, c. 115, s. 26; C. S., s. 5225; 1925, c. 73, ss. 3, 16; 1935, c. 87; 1975, c. 538, s. 1.)

Editor's Note. — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

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which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

ARTICLE 15.

Central Associations.

§ 54-110. Central association.

(g) Section 54-109.21 shall not apply to a central association, and such an association shall have power to borrow money from any source in amounts not in excess of 10 times the amount of its capital and reserve fund.

(i) Section 54-109.82(6) shall not apply to a central association, and such association shall have the power to invest in loans to other credit unions in such amounts as approved by its loan officer and/or credit committee.

(1975, c. 538, ss. 2, 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Section 54-109.21" for "Section 54-84" in subsection (g) and substituted "Section 54-109.82(6)" for "G.S. 54-86(6)" in subsection (i).

As the rest of the section was not changed by the amendment, only subsections (g) and (i) are set out.

Chapter 55. Business Corporation Act.

Article 5.

Corporate Finance.

Sec.

55-45. Sale of shares and options to employees.

Sec.

55-50. Dividends in cash or property.

ARTICLE 5.

Corporate Finance.

§ 55-45. Sale of shares and options to employees. — (a) Unless otherwise provided in the charter, a corporation may provide for and carry out a plan for the sale of its unissued or treasury shares to its employees or to the employees of its subsidiary corporations or to a trustee on their behalf. Such plan shall be adopted at a special or annual meeting by vote of a majority of the shares entitled to vote. Such plan may include provisions, among others, for: the kind and amount of consideration, payment in installments or at one time; aiding any such employees in paying for such shares by compensation for services, by loans, or otherwise; granting of options, which may, if so provided by the plan, be nontransferable otherwise than by will or the laws of descent and distribution; the fixing of eligibility for participation in the plan; the class and price of shares to be sold under the plan; the number of shares which may be purchased, the method of payment therefor, the reservation of title until full payment; the effect of termination of employment; an option or obligation on the part of the corporation to repurchase the shares; and the time limits and termination of the plan. The term "employees" as used in this section includes officers in the full-time employment of the corporation, but nothing in this section is intended to permit financial aid to such officers in violation of G.S. 55-22.

(1975, c. 303.)

Editor's Note. —

The 1975 amendment substituted "which may, if so provided by the plan, be nontransferable otherwise than by will or the laws of descent and distribution" for "which shall be

nontransferable except by operation of law" near the middle of the third sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 55-50. Dividends in cash or property.

(m) Upon receipt of a demand from the holders of twenty percent (20%) or more of the shares of any class of shares pursuant to subsection (l) of this section, the corporation receiving such demand may, during the then fiscal period or within three months after the close thereof, give written notice to each shareholder making such written demand that the corporation elects to redeem all shares held by such shareholder in lieu of the payment of dividends as provided in subsection (l) of this section and shall pay to such shareholder the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice. A shareholder receiving such notice shall thereafter be entitled to withdraw his dividend demand by giving written notice of such withdrawal to the corporation within 10 days after receipt of the redemption notice of the corporation or, if no such withdrawal is made, to receive the fair value of his shares, subject only to the surrender by him of the certificate

or certificates representing his shares and to the provisions of G.S. 55-52, which value shall be determined and paid as follows:

- (1) If within 30 days after the date upon which a shareholder becomes entitled to payment for his shares under this subsection, the value of the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within 60 days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.
- (2) If within the such 30-day period the shareholder and the corporation do not agree as to the value of the shares, the shareholder may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least 10 days prior to the hearing of the petition by the court. The award of appraisers, or a majority of them, if no exceptions be filed thereto within 10 days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within 10 days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40 for the trial of cases under the eminent domain law of this State, and with the same right of appeal as is permitted in said Chapter. The court shall assess the cost of said proceedings as it shall deem equitable. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as in this subsection provided, may be held and disposed of by the corporation as in the case of other treasury shares. (Code, s. 681; 1901, c. 2, ss. 33, 52; Rev., ss. 1191, 1192; C. S., ss. 1178, 1179; 1927, c. 121; 1933, c. 354, s. 1; G. S., ss. 55-115, 55-116; 1955, c. 1371, s. 1; 1959, c. 1316, s. 16; 1965, c. 726; 1969, c. 751, ss. 22, 45; 1973, c. 469, ss. 18-20; c. 683; c. 1087, ss. 3-5; 1975, c. 19, s. 17; c. 304.)

Editor's Note. —

The first 1975 amendment corrected an error in the first 1973 amendatory act by substituting "give" for "given" preceding "written notice" near the middle of the first sentence of subsection (m).

The second 1975 amendment inserted the language beginning "to withdraw his dividend" and ending "withdrawal is made" and substituted "the certificate or certificates" for "his certificate" in the second sentence of subsection (m).

As the rest of the section was not changed by the amendments, only subsection (m) is set out.

ARTICLE 9.

Dissolution and Liquidation.

§ 55-125. Power of courts to liquidate and decree involuntary dissolution.

Power of Court Absent Statute. — As a general rule, the court would have no power, absent statutory direction, to order the dissolution of a corporation simply on the grounds that there was a deadlock or dissention among the directors or stockholders. *Ellis v. Civic Imp., Inc.*, 24 N.C. App. 42, 209 S.E.2d 873 (1974), cert. denied, 286 N.C. 413, 211 S.E.2d 794 (1975).

Finding Required under Subdivision (a)(1). — Under subdivision (a)(1), irreconcilable

deadlock of the directorate or shareholders is not sufficient basis for an order of liquidation without a supported finding or conclusion that the shareholders are so deadlocked that its business can no longer be conducted with advantage to all the shareholders. *Ellis v. Civic Imp., Inc.*, 24 N.C. App. 42, 209 S.E.2d 873 (1974), cert. denied, 286 N.C. 413, 211 S.E.2d 794 (1975).

ARTICLE 10.

Foreign Corporations.

§ 55-132. Powers of foreign corporation.

Securities Issued by Foreign Corporation. — The mere fact that a public utility otherwise subject to the jurisdiction of this State is a foreign corporation does not deprive this State of all supervisory and regulatory powers over

securities issued by such a corporation. *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d (1974).

§ 55-145. Jurisdiction over foreign corporations not transacting business in this State.

Minimum Contacts Held Not to Exist. —

In an action for breach of purchase agreements by the seller against the alleged buyer, a foreign corporation, and its agent, the seller fell short of carrying the burden of establishing that the foreign corporation's activities sufficed to satisfy the requirements of the "minimum contacts" doctrine, and the foreign corporation's motion to dismiss was therefore allowed. *Marshall Exports, Inc. v. Phillips*, 385 F. Supp. 1250 (E.D.N.C.), aff'd, 507 F.2d 47 (4th Cir. 1974).

Contract Made or to Be Performed, etc. —

While the mere execution of a contract in North Carolina has never been held to be a substantial connection, the execution, anticipated performance and continuing part

performance of the contract in this State constitute substantial in-state activity; thus, North Carolina's courts have in personam jurisdiction over the assignee of the contract. *Munchak Corp. v. Caldwell*, 25 N.C. App. 652, 214 S.E.2d 194 (1975).

Assignee of pension contract, assumes, with full knowledge of the pendency of a lawsuit, a portion of the obligations under the contract, and it steps into the shoes of the assignor and thus comes within the statutory criteria for "long-arm" jurisdiction. *Munchak Corp. v. Caldwell*, 25 N.C. App. 652, 214 S.E.2d 194 (1975).

Cited in *Spartan Leasing, Inc. v. Brown*, 285 N.C. 689, 208 S.E.2d 649 (1974).

§ 55-146. Service on foreign corporations by service on Secretary of State.

Cited in *Marshall Exports, Inc. v. Phillips*, 507
F.2d 47 (4th Cir. 1974).

Chapter 55B.
Professional Corporation Act.

§ 55B-9. Professional relationship and liability.

Liability of Professional Corporations. —
Professional corporations are liable to the same
extent as if they were a partnership. Zimmerman

v. Hogg & Allen, 22 N.C. App. 544, 207 S.E.2d
267, rev'd on other grounds, 286 N.C. 24, 209
S.E.2d 795 (1974).

Chapter 57.**Hospital, Medical and Dental Service Corporations.**

Sec.

57-7.1. Coverage for active medical treatment in tax-supported institutions.

Sec.

57-7.2. Contracts to cover any person possessing the sickle cell trait or hemoglobin C trait.

§ 57-7.1. Coverage for active medical treatment in tax-supported institutions. — (a) No hospital or medical or dental service plan, contract or certificate governed by the provisions of Chapter 57 of the General Statutes of North Carolina shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Insurance, after May 21, 1975, unless such plan, contract or certificate provides for the payment of benefits for charges made for medical care rendered in or by duly licensed state tax-supported institutions, including charges for medical care of cerebral palsy, other orthopedic and crippling disabilities, mental and nervous diseases and disorders, mental retardation, alcoholism and drug or chemical dependency, and respiratory illness, on a basis no less favorable than the basis which would apply had the medical care been rendered in or by any other public or private institution or provider. The term "state tax-supported institutions" shall include community mental health centers and other health clinics which are certified as Medicaid providers.

(b) No plan, contract, or certificate shall exclude payment for charges of a duly licensed state tax-supported institution because of its being a specialty facility for one particular type of illness nor because it does not have an operating room and related equipment for the performance of surgery, but it is not required that benefits be payable for domiciliary or custodial care, rehabilitation, training, schooling, or occupational therapy.

(c) The restrictions and requirements of this section shall not apply to any plan, contract, or certificate which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy, but shall apply only to those hospital service and medical service subscriber plans, contracts, or certificates delivered, issued for delivery, reissued or renewed in this State on and after July 1, 1975. (1975, c. 345, s. 2.)

§ 57-7.2. Contracts to cover any person possessing the sickle cell trait or hemoglobin C trait. — No hospital, medical, dental, or any health service governed by this Chapter shall refuse to issue or deliver any individual or group hospital, dental, medical, or health service contract in this State which it is currently issuing for delivery in this State, and which affords benefits or coverage for any medical treatment or service authorized or permitted to be furnished by a hospital, clinic, family health clinic, neighborhood health clinic, health maintenance organization, physician, physician's assistant, nurse practitioner or any medical service facility or personnel, on account of the fact that the person who is to be insured possesses sickle cell trait or hemoglobin C trait; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge on account of the fact that the person who is to be insured possesses sickle cell trait. (1975, c. 599, s. 2.)

Editor's Note. — Session Laws 1975, c. 599, s. 3, makes the act effective July 1, 1975, and provides that it shall apply to policies of

insurance delivered or issued for delivery in this State on or after July 1, 1975.

Chapter 58.

Insurance.

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SUBCHAPTER IV. LIFE INSURANCE.

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58-224 to 58-241.5. [Recodified.]

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Mutual Burial Associations.

58-241.6. Mutual burial associations placed under supervision of Burial Association Commission; Com-

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- mission to select Burial Association Administrator.
- 58-241.7. North Carolina Mutual Burial Association Commission; membership; election; duties.
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- 58-241.21. Free services; failure to make proper assessments, etc., made a misdemeanor.
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- 58-241.28. Operation of association in violation of law prohibited.
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SUBCHAPTER V. AUTOMOBILE INSURANCE.

Article 25.

Regulation of Automobile Liability Insurance Rates.

- 58-248.9. [Repealed.]

Article 25A.

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- 58-248.34. Plan of operation.

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Article 26.

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- 58-251.6. Insurers and others to afford coverage for active medical treatment in tax-supported institutions.
- 58-251.7. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait.

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- 58-260.2. [Repealed.]

SUBCHAPTER VIII. CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE.

Article 32.

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- 58-341. Application of Article.
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Sec.

58-347. Forms to be filed with Commissioner; approval or disapproval by Commissioner.

58-348. General premium rate standard.

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58-352. Issuance of policies.

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58-358. Reinsurance.

SUBCHAPTER I. INSURANCE DEPARTMENT.

ARTICLE 1.

Title and Definitions.

§ 58-3.1. Motor vehicle warranties. — Any motor vehicle warranty issued by a person as defined in this Article, other than a warranty made solely by the manufacturer or seller without charge or an extended warranty offered as an option by a manufacturer for charge, guaranteeing indemnity for defective parts, mechanical breakdown and labor shall be a contract of insurance, provided that a product guaranty or warranty which accompanies the sale of a product used in the maintenance or operation of a motor vehicle shall not be a contract of insurance under this Chapter. (1959, c. 866; 1975, cc. 643, 788.)

Editor's Note. — The first 1975 amendment added the proviso.

The second 1975 amendment inserted "or an

extended warranty offered as an option by a manufacturer for charge."

ARTICLE 2.

Commissioner of Insurance.

§ 58-7.1. Chief deputy commissioner. — The Commissioner shall appoint and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner. He shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the last sentence. See § 143-344(a).

§ 58-7.2. Chief actuary. — The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the section. See § 143-344(a).

§ 58-7.3. Other deputies, actuaries, examiners and employees. — The Commissioner shall appoint or employ and may remove at his discretion such other deputies, actuaries, examiners, clerks and other employees as may be found necessary for the proper execution of the work of the Insurance Department, at such compensation as shall be fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the section. See § 143-344(a).

§ 58-9. Powers and duties of Commissioner.

Authority to Regulate Rates. — The Commissioner of Insurance has no authority to prescribe or regulate premium rates except insofar as that authority has been conferred upon him by statute. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate

Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

Applied in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

§ 58-9.4. Court review of rates and classification.

Applied in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

§ 58-9.5. Procedure on appeal under § 58-9.4. — Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-9.4 shall be subject to the following provisions:

(4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(5), (6) Repealed by Session Laws 1975, c. 391, s. 11, effective July 1, 1975.

(8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.

(1975, c. 391, s. 11.)

Editor's Note. — The 1975 amendment substituted the present second sentence of subdivision (4) for former provisions outlining the procedure for taking the appeal, repealed subdivisions (5) and (6), also relating to procedure on appeal, and substituted "appellate

procedure" for "the Court of Appeals" in two places in subdivision (8). A literal compliance with the language of the 1975 amendatory act would have required "appellate procedure" to be substituted for "the Court of Appeals" near the beginning of the last sentence of subdivision (8)

as well as at the end of that sentence; however, the codifiers have not followed the act literally, but have given it effect according to its obvious intent.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of

Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the other subdivisions were not changed by the amendment, they are not set out.

Applied in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

§ 58-9.6. Extent of review under § 58-9.4.

"Material and Substantial Evidence". — A finding that a fact is true because the fact finder finds no reason to believe it is not true is certainly not supported by "material and substantial evidence." State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. State ex rel.

Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Substantial evidence is more than a scintilla or a permissible inference. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Applied in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 228, 210 S.E.2d 439 (1974).

ARTICLE 3.

General Regulations for Insurance.

§ 58-30.3. Discriminatory practices prohibited. — No insurer shall after September 1, 1975, base any standard or rating plan for private passenger automobiles or motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. (1975, c. 666, s. 1.)

§ 58-30.4. Revised classifications and rates. — The North Carolina Automobile Rate Administrative Office shall file with the Commissioner of Insurance for his approval or other action as provided in G.S. 58-248.1 a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) automobiles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications, to wit: (i) pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Automobile Rate Administrative Office shall file with the Commissioner of Insurance for his approval or other action as provided in G.S. 58-248.1 a revised subclassification plan with premium surcharges for insureds having less than two years' driving experience as licensed drivers, or having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof. Said subclassification plan shall be designed to provide not less than one fourth of the total premium income of insurers in writing and servicing the aforesaid coverages in this State.

The revised basic classification and subclassification plans specified in this section shall supersede the existing basic classification and subclassification plans on the hereinabove specified coverages.

The Commissioner is authorized and directed to implement the plans provided for in this section on September 2, 1975. (1975, c. 666, s. 1.)

§ 58-44.3. Discrimination forbidden.

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

The sanctions provided by statutes for violations of the antirebate provisions are

directed to the insurers, agents, brokers or other representatives, and the statutes do not declare that contracts in violation of the antirebate provision are void. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

§ 58-44.5. Rebates prohibited.

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

The sanctions provided by statutes for violations of the antirebate provisions are

directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

ARTICLE 3A.

Unfair Trade Practices.

§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined. — The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

- (11) In connection with first-party claims, committing or performing with such frequency as to indicate a general business practice any of the following:
 - a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
 - c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
 - d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - e. Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed;
 - f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
 - g. Compelling [the] insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured;
 - h. Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled;

- i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;
- j. Making claims payments to insureds or beneficiaries not accompanied by [a] statement setting forth the coverage under which the payments are being made;
- k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- l. Delaying the investigation or payment of claims by requiring an insured claimant, or the physician, of [or] either, to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information;
- m. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and
- n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement. (1949, c. 1112; 1955, c. 850, s. 3; 1967, c. 935, s. 2; 1975, c. 668.)

Editor's Note. —

The 1975 amendment added subdivision (11).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (11) are set out.

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

The sanctions provided by statutes for violations of the antirebate provisions are directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

SUBCHAPTER II. INSURANCE COMPANIES.

ARTICLE 13.

Fire Insurance Rating Bureau.

§ 58-131.3A. Premium discount for proper mobile home tie-down. — The Commissioner is authorized and directed to implement not less than a ten-percent (10%) discount from the insurance premium otherwise applicable to be allowed in diminution of the premium charged insureds under mobile-home owner policies and mobile-homeowner's policies where the mobile home covered by the policy has been properly secured in accordance with regulations of the North Carolina State Building Code Council as approved by the Commissioner or any other standard which is approved by the Commissioner and which affords no less protection from windstorm damage than the aforesaid regulations. (1975, c. 670, s. 1.)

Editor's Note. — Session Laws 1975, c. 670, s. 2, provides: "This act shall become effective upon ratification but shall apply only to policies

of insurance issued or renewed on or after November 1, 1975." The act was ratified June 18, 1975.

ARTICLE 13A.

Casualty Insurance Rating Regulations.

§ 58-131.18. Restriction on use of rates.

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

The sanctions provided by statutes for violations of the antirebate provisions are

directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

SUBCHAPTER III. FIRE INSURANCE.

ARTICLE 18B.

Fair Access to Insurance Requirements.

§§ 58-173.29 to 58-173.33: Reserved for future codification purposes.

ARTICLE 18C.

North Carolina Health Care Liability Reinsurance Exchange.

§ 58-173.34. **Declarations and purpose of the Article.** — It is hereby declared by the General Assembly of North Carolina that the availability of health care liability insurance for physicians and surgeons, dentists, nurses, nurse anesthetists, hospitals and others engaged in the healing practicing arts is necessary for the economic welfare of the State and that without such insurance health care services may be severely curtailed; and that while the need for such insurance is increasing, the supply is not adequate and is likely to become less adequate in the future; and that present plans to provide adequate health care liability insurance in North Carolina have not been sufficient to meet the needs of our citizens. It is further declared that the State has an obligation to provide an equitable method whereby every insurer licensed to write general liability insurance in North Carolina be required to meet this market demand. It is the purpose of this Article to define this obligation and provide a mandatory program to assure an adequate supply of health care liability insurance coverages in the State of North Carolina. (1975, c. 427, s. 1.)

Editor's Note. — Session Laws 1975, c. 427, s. 2, contains a severability clause.

§ 58-173.35. **Scope.** — This Article shall apply to all kinds of health care liability insurance for physicians and surgeons, dentists, nurses, nurse anesthetists, hospitals and others engaged in the healing practicing arts which is designed to afford protection against liability that may arise from rendering or failing to render services of a professional nature. (1975, c. 427, s. 1.)

§ 58-173.36. **Construction.** — This Article shall be liberally construed to effect the purposes of this Article which shall constitute [an] aid and guide to interpretation. (1975, c. 427, s. 1.)

§ 58-173.37. Definitions. — As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the profit or loss of otherwise unacceptable business (to the extent permitted in the plan of operation) from the individual insurer to all insurers through the operation of the Exchange.
- (2) "Commissioner" means the Commissioner of Insurance of this State.
- (3) "Company" means each member of the Exchange.
- (4) "Eligible risk" means a person who is a resident of this State who holds a valid license to practice or perform in this State a given health care profession as set forth in the license requirements of the statutory board issuing said license, and hospitals as defined in G.S. 131-126.1(3), including but not limited to the following categories: physicians, surgeons, dentists, nurses, nurse anesthetists, physiotherapists, medical or X-ray laboratories, chiropractors, chiropodists, optometrists, osteopaths and blood banks, provided, however, that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for health care liability insurance premiums and such person has not been discharged from paying said judgment.
- (5) "Exchange" means the North Carolina Health Care Liability Reinsurance Exchange established pursuant to the provisions of this Article.
- (6) "General liability insurance" means insurance against legal liability of the insured as authorized under G.S. 58-72(13) and (14), excluding insurance against liability arising out of the ownership, operation, maintenance and use of a motor vehicle as defined in G.S. 20-4.01.
- (7) "Health care liability insurance" means insurance against legal liability of the insured caused by injury arising out of the rendering of, or failure to render, health care services by the insured, or by any person for whose acts or omissions such insured is legally responsible.
- (8) "Person" means every natural person, firm, partnership, association, corporation or government or agency thereof.
- (9) "Plan of operation" means the plan of operation approved pursuant to the provisions of this Article.
- (10) "Premiums" means direct written premium for all general liability insurance coverages on policyholders in this State (excluding reinsurance assumed and ceded). (1975, c. 427, s. 1.)

§ 58-173.38. North Carolina Health Care Liability Reinsurance Exchange; creation; membership. — (a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Health Care Liability Reinsurance Exchange consisting of all insurers licensed to write and engaged in writing within this State general liability insurance or any component thereof except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77(5)b, 58-77(5)d and 58-77(7)b. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Exchange and shall be bound by the rules of operation thereof as provided for in this Article and as promulgated by the board of governors. No company may withdraw from membership in the Exchange unless it ceases to write general liability insurance in this State or ceases to be licensed to write such insurance.

(b) The Exchange shall be under the immediate supervision of the Commissioner and shall be subject to applicable provisions of the insurance laws of this State. (1975, c. 427, s. 1.)

§ 58-173.39. Obligations after termination of membership. — Any company whose membership in the Exchange has been terminated by withdrawal shall, nevertheless, with respect to its business prior to midnight of the effective date of such termination continue to be governed by this Article. (1975, c. 427, s. 1.)

§ 58-173.40. Insolvency. — Any unsatisfied net liability to the Exchange of any insolvent member shall be assumed by and apportioned among the remaining members in the Exchange in the same manner in which assessments or gain are apportioned by the Exchange. The Exchange shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the Exchange in accordance with this Article. (1975, c. 427, s. 1.)

§ 58-173.41. Merger, consolidation or cession. — When a member has been merged or consolidated into another insurer, or has ceded its entire general liability insurance business in the State to another insurer, such company or its successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the Exchange according to the rules of operation. (1975, c. 427, s. 1.)

§ 58-173.42. General obligations of insurers. — Except as otherwise provided in this Article all insurers as a prerequisite to the further engaging in this State in the writing of general liability insurance or any component thereof shall accept and insure any applicant therefor who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the Exchange. All such insurers shall equitably share the results of any health care liability insurance business ceded to and through the Exchange and shall be bound by the acts of their agents in accordance with the provision of this Article. No insurer shall impose upon any of its agents, solely on account of ceded business received from such agents, any quota or matching requirement for any other insurance as a condition for further acceptance of ceded business from such agents. Any insurer with obligations under this section may elect with approval of the Exchange to assign the underwriting, issuance of policies, and claim handling to a designated carrier approved by the board of governors. Assignment of these functions, however, shall not relieve an insurer of its obligation to share proportionately in the financial operation of the Exchange. (1975, c. 427, s. 1.)

§ 58-173.43. General obligations of agents. — Except as otherwise provided in this Article, no licensed agent of an insurer authorized to solicit and accept premiums for general liability insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for health care liability insurance and to immediately bind the coverage applied for and for a period of not less than one year if cession of the particular coverage and coverage limits applied for are permitted in the Exchange, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the agent's customary practices and procedures. The compensation to agents on ceded business shall not be less than the customary compensation paid on business not ceded. (1975, c. 427, s. 1.)

§ 58-173.44. The Exchange; functions; administration. — (a) The operation of the Exchange shall assure the availability of all health care liability insurance coverages to any eligible risk by means of reinsurance and the Exchange shall accept for transfer to the account of all members the profit or loss of the business ceded in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Exchange shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) as follows: For the following coverages of health care liability insurance and in at least the following amounts of insurance: bodily injury and property damage liability: per occurrence twenty-five thousand dollars (\$25,000), annual aggregate seventy-five thousand dollars (\$75,000).

(c) Additional ceding privileges for health care liability insurance shall be provided by the board of governors if there is substantial demand for a coverage or coverage limit of any component of health care liability insurance up to the following: per occurrence one hundred thousand dollars (\$100,000), annual aggregate three hundred thousand dollars (\$300,000).

(d) Further additional ceding privileges for health care liability insurance shall be provided by the board of governors if there is substantial demand for excess coverage of health care liability insurance up to the following: per occurrence one million dollars (\$1,000,000), annual aggregate one million dollars (\$1,000,000).

(e) The Exchange shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as other insurance losses are adjusted and to effect settlement where settlement is appropriate; however, the Exchange shall provide reasonable means whereby any insurer may elect to assign the underwriting, issuance of policies, and claim handling to a designated carrier approved by the board of governors. Assignment of these functions, however, shall not relieve an insurer of its obligation to share proportionately in the financial operation of the Exchange.

(f) The Exchange shall be administered by a board of governors. The board of governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Exchange insurance company member serving on the board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the board at the same time. Five members of the board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing general liability insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Mutual Insurance Agents, North Carolina Division. The initial term of office of said board members shall be two years. Following completion of initial terms, successors to the members of the original board of governors shall be selected to serve three years. All members of the board of

governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article.

(g) The Commissioner and member companies shall provide for a board of governors within 30 days after ratification of this Article. If any member seat on the initial board of governors is not filled in accordance with this Article within such time, then in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (f) of this section to serve the initial term on the board of governors. As soon as possible after its selections, the Commissioner shall call for the initial meeting of the board. After the board of governors has been selected it shall then elect from its membership a chairman and shall then meet thereafter as often as the chairman shall require or at the request of three members of the board of governors. The chairman shall retain the right to vote on all issues. Five members of the board of governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive years.

(h) The board of governors shall have full power and administrative responsibility for the operation of the Exchange. Such administrative responsibility shall include but not be limited to:

- (1) Proper establishment and implementation of the Exchange.
- (2) Employment of a manager who shall be responsible for the continuous operation of the Exchange and such other employees, officers and committees as it deems necessary.
- (3) Provision for appropriate housing and equipment to assure the efficient operations of the Exchange.
- (4) Promulgation of reasonable rules and regulations for the administration and operation of the Exchange and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.
- (i) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Exchange is vested in the board of governors, which power and responsibility include but are not limited to the following:
 - (1) To sue and be sued in the name of the Exchange. No judgment against the Exchange shall create any direct liability to the individual member companies of the Exchange.
 - (2) To receive and record reinsurance cessions from member companies.
 - (3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Exchange at such intervals as are established in the plan of operation.
 - (4) To contract for goods and services from others to assure the efficient operation of the Exchange.
 - (5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Exchange.
 - (6) To review the market for health care liability insurance throughout North Carolina to make certain that eligible risks can readily obtain such insurance and to provide in the plan of operation a reasonable means for achieving this objective. The Exchange is authorized to require all companies in a fair and equitable manner who are writers of general liability insurance in this State to appoint and license any fire and casualty agent duly licensed to write insurance in North

Carolina, in such places where a market need has been demonstrated, to be their agent to write health care liability insurance.

- (7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Exchange, and to require each member to furnish such statistics relative to insurance reinsured by the Exchange and statistics on such insurance not reinsured in the Exchange at such times and in such form and detail as may be required.
- (8) To establish fair and reasonable procedures for the sharing among the members of profit and loss on Exchange business and other costs, charges, expenses, liabilities, income, property and other assets of the Exchange and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's direct written premium for general liability insurance or by any other fair and reasonable method.
- (9) To receive or distribute all sums required by the operation of the Exchange.
- (10) To accept all risks submitted from the companies in accordance with this Article.
- (11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Exchange will be handled fairly and efficiently.
- (12) To adopt and enforce all rules and to do anything else where the board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Exchange and is not in conflict with the other provisions of this Article.

(j) Each member company shall authorize the Exchange to audit that part of the company's business which is written subject to the Exchange in a manner and time prescribed by the board of governors.

(k) The board of governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the board of governors.

(l) There shall be furnished to each member an annual report of the operation of the Exchange in such form and detail as may be determined by the board of governors.

(m) Each member shall furnish statistics in connection with insurance subject to the Exchange as may be required by the Exchange. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums, charges, expenses and losses. (1975, c. 427, s. 1.)

§ 58-173.45. Plan of operation. — (a) Within 60 days after the initial organizational meeting, the Exchange shall submit to the Commissioner, for his approval, a proposed plan of operation, consistent with the provisions of this Article, which shall provide for economical, fair and nondiscriminating administration and for the prompt and efficient provision on health care liability insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this Article.

(b) The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the Article if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation the Commissioner shall notify the Exchange in what respect the plan of operation fails to meet the specific requirements of this Article. The Exchange shall, within 30 days thereafter,

submit for his approval a revised plan of operation which meets the specific requirements of this Article. In the event the Exchange fails to submit a revised plan of operation which meets the specific requirements of this Article within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this Article.

(c) Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision of [or] amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or the promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write general liability insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Exchange, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members to defray losses and expenses, the distribution of gains, the standard amount one hundred percent (100%) of coverage afforded on eligible risks which a member company may cede to the Exchange, and the procedure by which reinsurance shall be accepted by the Exchange; and establish procedure for receiving and maintaining separate statistics on all health care liability insurance written by each member company; and shall further provide that:

- (1) Members of the board of governors shall receive reimbursement from the Exchange for their actual and necessary expenses incurred on Exchange business, en route to perform Exchange business, and while returning from Exchange business plus a per diem allowance of twenty-five dollars (\$25.00) a day which may be waived.
- (2) In order to obtain a transfer of business to the Exchange effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Exchange of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Exchange shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Exchange shall accept renewal business after the member on underwriting review elects to again cede the business. (1975, c. 427, s. 1.)

§ 58-173.46. No limit on cessions; compulsory cessions. — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation. A company may cede to the Exchange one hundred percent (100%) of its health care liability insurance business in North Carolina. In order to prevent significant adverse selection resulting from cessions to the Exchange, the board of governors upon a finding of significant adverse selection shall require one hundred percent (100%) ceding by all members of the coverages on any of the separate eligible risk categories enumerated in G.S. 58-173.37(4). There shall be a presumption that significant adverse selection exists if for any period of one

year or more the result from dividing the losses incurred by the premiums earned on business ceded to the Exchange is in excess of one hundred and five percent (105%) of the result of dividing the losses incurred by the premiums earned on business retained by the members. (1975, c. 427, s. 1.)

§ 58-173.47. Approval of rates. — The premium rates that may be charged on all health care liability insurance, including premiums ceded to the Health Care Liability Reinsurance Exchange established by this Article, shall be established from time to time by the Commissioner of Insurance on the basis of the latest available statistical data submitted by rating bureaus or insurers authorized to write general liability insurance in this State. Every rating bureau authorized to engage in rate making or insurer licensed in this State to write general liability insurance coverages may submit proposed changes in rates or classifications to the extent necessary to produce rates and classifications which are reasonable, adequate, not unfairly discriminatory and in the public interest, or the Commissioner, upon his own motion, may, upon the latest available statistical data, order a reduction or increase in rates. Any premium rate change shall be established by the Commissioner only after due notice and hearing as provided in G.S. 58-9.2 and with full rights of appeal as provided in G.S. 58-9.4. The rate so established by the Commissioner shall be reasonable, adequate, not excessive, not unfairly discriminatory and in the public interest. Such rates shall not be deemed unreasonable, inadequate, excessive, unfairly discriminatory or not in the public interest if they are adequate to defray the total cost of the Exchange system and if they make adequate provision for premium rates for the future which will provide for anticipated losses, anticipated loss adjustment expenses, other anticipated expenses attributable to the selling and servicing of this line of insurance, and a fair and reasonable underwriting profit. The determination of a fair and reasonable underwriting profit shall take into consideration earnings from the investment of unearned premium reserves and loss reserves on North Carolina business. Every rating method, schedule, [and] classification submitted to the Commissioner for approval shall be deemed approved if the Commissioner, within 60 days after submission, has not issued a notice of hearing on the matter. (1975, c. 427, s. 1.)

§ 58-173.48. Termination of insurance. — No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provision of this Article except for the following reasons:

- (1) Nonpayment of premium when due to the insurer or producing agent.
- (2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
- (3) The license of a named insured to practice his profession is in a state of suspension or has been revoked. (1975, c. 427, s. 1.)

§ 58-173.49. Hearings; review. — (a) Any applicant for a policy from any carrier, any person insured under such a policy, any member of the Exchange and any agent duly licensed to write health care liability insurance may request a formal hearing and ruling by the board of governors of the Exchange on any alleged violation of or failure to comply with the plan of operation or the provisions of this Article or any alleged improper act or ruling of or in the case of a member directly affecting him as to coverage or premium or in the case of a member directly affecting its assessment, and in the case of an agent, any matter affecting his appointment to a carrier or his account therewith. The request for hearing must be made within 15 days after the date of the alleged

violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request. The hearing may be held by any panel of the board of governors consisting of not less than three members thereof, and the ruling of a majority of the panel shall be deemed to be the ruling of the board, unless the full board on its own motion shall modify or rescind the action of the panel.

(b) Any formal ruling by the board of governors may be appealed to the Commissioner by filing notice of appeal with the Exchange and Commissioner within 30 days after issuance of the ruling.

(c) The Commissioner shall hear the matter de novo and issue an order approving the action or decision, disapproving the action or decision, or directing the board of governors to act in accordance with the ruling of the Commissioner.

(d) Any aggrieved person or organization, any member of the Exchange or the Exchange may request a public hearing and ruling by the Commissioner on the provisions of the plan of operation, rules, regulations or policy forms approved by the Commissioner. The request for hearing shall specify the matter or matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matter or matters to be considered not less than 15 days in advance of the hearing date.

(e) In any hearing held pursuant to this section by the board of governors or the Commissioner, the board or the Commissioner, as the case may be, shall issue a ruling or order within 30 days after the close of the hearing.

(f) All rulings or orders of the Commissioner under this section shall be subject to judicial review as provided in Article 2 of Chapter 58 of the General Statutes. (1975, c. 427, s. 1.)

§ 58-173.50. Examination of the Exchange; annual report. — The Exchange shall be subject to examination and regulation by the Commissioner. The board of governors shall submit to the Commissioner, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner and a report of its activities during the preceding calendar year. (1975, c. 427, s. 1.)

§ 58-173.51. Tax exemptions. — The Exchange shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except ad valorem taxes. (1975, c. 427, s. 1.)

ARTICLE 19.

Fire Insurance Policies.

§ 58-176. Fire insurance contract; standard policy provisions.

Applied in *Andrews v. North Carolina Farm Bureau Mut. Ins. Co.*, 26 N.C. App. 163, 215 S.E.2d 373 (1975).

ARTICLE 21.

Insuring State Property.

§ 58-189. State Property Fire Insurance Fund created. — Upon the expiration of all existing policies of fire insurance upon state-owned buildings, fixtures, furniture, and equipment, including all such property the title to which

may be in any State department, institution, or agency, the State of North Carolina shall not reinsure any of such properties.

There is hereby created a "State Property Fire Insurance Fund," which shall be as a special fund in the State treasury, for the purpose of providing a reserve against loss from fire at State departments and institutions. The State Treasurer shall invest all funds deposited in the "State Property Fire Insurance Fund" in the same type of securities [in] which the North Carolina Teachers' and State Employees' Retirement System funds may be invested and all earnings shall become a part of the fund and be held and invested as all contributions are invested. The unexpended appropriations of State departments and institutions for fire insurance premiums for the fiscal year 1944-1945 and the appropriations for fire insurance premiums made for the biennium 1945-1947 or that may thereafter be made for this purpose shall be transferred to the "State Property Fire Insurance Fund." (1945, c. 1027, s. 1; 1963, c. 462; 1975, c. 519, s. 1.)

Editor's Note. — The 1975 amendment, in the second sentence of the second paragraph, substituted "State Treasurer" for "Sinking Fund Commission" and "which the North Carolina Teachers' and State Employees'

Retirement System funds" for "in which State sinking funds," deleted "of the fund" following "all earnings," and inserted "all" preceding "contributions."

§ 58-190. Appropriations; fund to pay administrative expenses. — Upon the expiration of the existing fire insurance policies on said properties and in making appropriations for any biennium after the next biennium, the Commissioner of Insurance shall file with the Department of Administration his estimate of the appropriations which will be necessary in order to set up and maintain an adequate reserve to provide a fund sufficient to protect the State, its departments, institutions, and agencies from loss or damage to any of said properties up to fifty per centum (50%) of the value thereof. Appropriations made for the creating of such fire insurance reserves against property of the Department of Agriculture, or the Board of Transportation or any special operating fund shall be charged against the funds of such departments.

The State Property Fire Insurance Fund is authorized and empowered to pay all the administrative expenses occasioned by the administration of Article 21 of Chapter 58 of the General Statutes. (1945, c. 1027, s. 2; 1957, c. 65, s. 11; c. 269, s. 1; 1959, c. 182, s. 1; 1973, c. 507, s. 5.)

Editor's Note. —

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been

substituted for "Budget Bureau" near the middle of the first sentence. See § 143-344(a).

§ 58-191.1. Extended coverage insurance. — Upon request of any State department, agency or institution, extended coverage insurance, and other property insurance, may be provided on designated state-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid for out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may

be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. The words "extended coverage insurance," as used in this section, mean insurance against loss or damage caused by windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke. (1957, c. 67; 1975, c. 519, s. 2.)

Editor's Note. — The 1975 amendment substituted "and other property insurance may be" for "shall be" in the first sentence.

SUBCHAPTER IV. LIFE INSURANCE.

ARTICLE 22.

General Regulations of Business.

§ 58-195.5. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait. — No insurance company licensed in this State pursuant to the provisions of Chapter 58 shall refuse to issue or deliver any policy of life insurance authorized thereunder solely by reason of the fact that the person to be insured possesses sickle cell trait or hemoglobin C trait; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge by reason of the fact that the person to be insured possesses said traits. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. (1975, c. 600, s. 1.)

Editor's Note. — Session Laws 1975, c. 600, s. 2, provides: "This act shall become effective July 1, 1975, and shall apply to policies of

insurance delivered or issued for delivery in this State on and after July 1, 1975."

§ 58-201.1. Standard Valuation Law.

- (c) (1) Except as otherwise provided in subdivision (3) of this subsection, the minimum standard for the valuation of all such policies and contracts issued prior to the operative date of G.S. 58-201.2 shall be that provided by the laws in effect immediately prior to such date.
- (2) Except as otherwise provided in subdivision (3) of this subsection, the minimum standards for the valuation of all such policies and contracts issued on or after the operative date of G.S. 58-201.2 shall be the

Commissioner's reserve valuation method defined in subsection (d), three and one-half percent (3½%) interest, or, in the case of policies and contracts other than annuity and pure endowment contracts, issued on or after July 1, 1975, and prior to January 1, 1986, four percent (4%) interest, and the following tables:

- a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies — the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subdivision (e)(2) of G.S. 58-201.2, and the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.
- b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies — the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subdivision (e)(3) of G.S. 58-201.2, and the Commissioner's 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.
- c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commissioner.
- d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the Group Annuity Mortality Table for 1951, any modification of such table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.
- e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
- f. For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be

combined with a mortality table permitted for calculating the reserves for life insurance policies.

g. For group life insurance, life insurance issued on the substandard basis and other special benefits — such tables as may be approved by the Commissioner.

(3) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subdivision (3), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioner's reserve valuation method defined in subsection (d) and the following tables and interest rates:

a. For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest for single premium immediate annuity contracts, and four percent (4%) interest for all other individual annuity and pure endowment contracts.

b. For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and three and one-half percent ($3\frac{1}{2}\%$) interest.

c. For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest.

d. For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Commissioner, and three and one-half percent ($3\frac{1}{2}\%$) interest.

After July 1, 1975, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1979, which shall be the operative date of this subdivision for such company, provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this subdivision for such company shall be January 1, 1979.

(1975, c. 603, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, in subsection (c), rewrote the introductory paragraph as subdivision (2), inserted present subdivision (1), redesignated former subdivisions (1) through (7) as

paragraphs a through g of subdivision (2), and added subdivision (3).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 58-201.2. Standard nonforfeiture provisions.

- (e) (1) Except as provided in the third paragraph of this subdivision, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then-present value of the future guaranteed benefits provided for by the policy; (ii) two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent (40%) of the adjusted premium for the first policy year; (iv) twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this section except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) of this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

Except as otherwise provided in subdivisions (2) and (3) of this subsection, all adjusted premiums and present values referred to in this

section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not be more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

- (2) In the case of ordinary policies issued on or after the operative date of this subdivision (2) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent ($3\frac{1}{2}\%$) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior to January 1, 1986, and, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After May 12, 1959, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (2) after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (2) for such company), this subdivision (2) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (2) for such company shall be January 1, 1966.

- (3) In the case of industrial policies issued on or after the operative date of this subdivision (3) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the

rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3½%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior to January 1, 1986; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After June 11, 1963, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (3) for such company), this subdivision (3) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (3) for such company shall be January 1, 1968.

(1975, c. 603, ss. 2, 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, in subdivisions (2) and (3) of subsection (e), deleted "not exceeding three and one-half percent (3½%) per annum" following "rate of interest" near the middle of

the first sentences and inserted the first proviso in those sentences.

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 58-205.2. Renunciation. — A beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured may renounce as provided in Chapter 31B of the General Statutes. (1975, c. 371, s. 5.)

Editor's Note. — Session Laws 1975, c. 371, s. 6, makes the act effective Oct. 1, 1975.

§ 58-210. "Group life insurance" defined. — No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

- (2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:
 - a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the

policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

- b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent (75%) of the then-eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured.

d, e. Repealed by Session Laws 1975, c. 660, s. 4.

(1975, c. 660, s. 4.)

Editor's Note. —

The 1975 amendment, in subdivision (2), repealed paragraph d, which fixed the maximum amount of insurance to be provided on the life of any debtor, and paragraph e, which required that the insurance be payable to the policyholder, such payment to reduce the unpaid indebtedness of the debtor.

Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident

and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act. With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

ARTICLE 24.

Mutual Burial Associations.

§§ 58-224 to 58-241.5: Recodified as §§ 58-241.6 to 58-241.31, effective July 1, 1975.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 837, effective July 1, 1975, and has been recodified as Article 24A, § 58-241.6 et seq.

Section 58-237.2 was repealed by Session Laws 1975, c. 607.

ARTICLE 24A.

Mutual Burial Associations.

§ 58-241.6. Mutual burial associations placed under supervision of Burial Association Commission; Commission to select Burial Association Administrator. — All mutual burial associations now organized in the State of North Carolina, and all mutual burial associations hereafter organized and operating within said State, shall be under the general supervision of the North Carolina Mutual Burial Association Commission. The number of members composing this Commission and the manner of electing or appointing such members shall be as set out in G.S. 58-241.7.

The Commission shall maintain and operate such office facilities and shall employ such investigative, accounting, legal, secretarial and clerical employees as may be necessary for the efficient administration of the mutual burial association laws and regulations adopted pursuant thereto. The chief executive officer and administrator of such office shall be known as the Burial Association Administrator, and the office shall be known as the office of the Burial Association Administrator. All expenses of such office facilities and personnel shall be paid from funds coming to the office of the burial association pursuant to this Article and other applicable law. The Administrator shall have all powers granted to the Burial Association Administrator by this Article, all powers which the North Carolina Mutual Burial Association Commission may lawfully grant to such Administrator and all powers necessary and incidental to the powers heretofore enumerated. The person heretofore appointed by the Governor of the State of North Carolina and serving as Burial Association Administrator on July 1, 1975, shall serve until the completion of the term for which such person was appointed. If the office of the Burial Association Administrator shall become vacant for any reason prior to the expiration of the term of the person presently holding the office, such vacancy shall be filled by the Governor of the State of North Carolina and the person thus appointed shall serve only for the remainder of the unexpired term. Thereafter, the Governor shall appoint the Burial Association Administrator upon recommendation of the Burial Association Commission. The salary of the person serving as Burial Association Administrator on July 1, 1975, and the salary of any person serving as Burial Association Administrator throughout the remainder of any term for which such present incumbent was appointed, shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. Thereafter, the salary of the Burial Association Administrator shall be fixed by the North Carolina Mutual Burial Association Commission subject to the approval of the Advisory Budget Commission. The Burial Association Administrator shall give bond approved by the Commissioner of Insurance of the State of North Carolina in the sum of ten thousand dollars (\$10,000), conditioned for his faithful application of all funds coming into his hands by virtue of his office. (1941, c. 130, ss. 2, 19; 1943, c. 170; 1957, c. 541, s. 4; 1975, c. 837.)

Editor's Note. — This Article is Article 24 of this Chapter as rewritten by Session Laws 1975, c. 837, effective July 1, 1975, and recodified. Where appropriate, the historical citations to the

sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

§ 58-241.7. North Carolina Mutual Burial Association Commission; membership; election; duties. — The North Carolina Mutual Burial Association Commission shall be composed of five members chosen as follows:

- (1) Each of the two members serving on the Commission on July 1, 1975, who was elected by the North Carolina Funeral Directors Association, the member serving on the Commission on July 1, 1975, who was elected by the Funeral Directors and Morticians Association of North Carolina and the member serving on the Commission on July 1, 1975, who was elected by the North Carolina Perpetual Care Cemetery Association shall serve until the completion of the term for which such member was elected and until the successor for such member is elected or appointed (as the case may be) and qualified.
- (2) a. A vacancy occurring in the Commission prior to January 1, 1977, because of the expiration of the term of a Commission member (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled as follows: At least 90 days prior to the expiration of the term of the Commission member whose term is expiring, the North Carolina Burial Association Administrator and the president and vice-president of the North Carolina Burial Association, Incorporated, shall select the names of two persons who are mutual burial association officers. The names of the two persons so selected shall be printed on a ballot by the Administrator and one ballot mailed by him to each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated. No burial association operator shall be entitled to more than one vote. Each operator shall vote for one name on the ballot and shall return the ballot to the Burial Association Administrator by mail by posting the same on or before a date designated on the said ballot, which date shall be no later than 30 days prior to the expiration of the term of the Commission member for whom a successor is being elected. The name of any other nominee may be written on the ballot and space on the ballot for the writing-in of any such name shall be provided. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for a term of five years. In case of a tie vote, the winner shall be selected by lot and shall serve for a term of five years.
- b. A vacancy occurring in the Commission after December 31, 1976, because of the expiration of the term of a Commission member (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled in accordance with such rules and regulations as shall be determined by the North Carolina Burial Association, Incorporated, and as approved by the North Carolina Mutual Burial Association Commission, provided that each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated, shall be entitled to vote and further provided that no burial association operator shall be entitled to more than one ballot.
- c. A vacancy occurring in the Commission prior to January 1, 1977, because of the resignation, death or removal for cause of a member of the Commission (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled within 90 days of the occurrence of the vacancy as follows: The North

Carolina Burial Association Administrator and the president and vice-president of the North Carolina Burial Association, Incorporated, shall select the names of two persons who are mutual burial association officers. The names of the persons so selected shall be printed on a ballot by the Administrator and one ballot mailed by him to each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated. No burial association operator shall be entitled to more than one vote. Each operator shall vote for one name on the ballot and shall return the ballot to the Burial Association Administrator by mail by posting the same on or before a date set forth in the said ballot. The name of any other nominee may be written on the ballot and space on the ballot for the writing-in of any such name shall be provided. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for the remainder of the unexpired term to which such person was elected. In case of a tie vote, the winner shall be selected by lot and shall serve for the remainder of the unexpired term to which such person was elected.

- d. A vacancy occurring in the Commission after December 31, 1976, because of the resignation, death or removal for cause of a member of the Commission (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled within 90 days of the date of the occurrence of the vacancy in accordance with such rules and regulations as shall be determined by the North Carolina Burial Association, Incorporated, and as approved by the North Carolina Mutual Burial Association Commission, provided that each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated, shall be entitled to vote and further provided that no burial association operator shall be entitled to more than one ballot.
- (3) In the event that the North Carolina Burial Association, Incorporated, shall fail to select, within the time provided herein, a person to fill a vacancy on the Commission, whether the said vacancy shall have occurred by reason of expiration of term, resignation, death or otherwise, the Burial Association Administrator may declare the seat vacant and appoint any eligible person or persons to serve the term of the vacant seat.
- (4) Not more than three members of the Commission who shall have been elected or appointed thereto, as the case may be, in accordance with the provisions of subdivision (2) or subdivision (3) shall be of the same race.
- (5) The member serving on the Commission on July 1, 1975, who was appointed by the Governor shall continue to serve until the completion of the term for which such member was appointed and until the successor for such member is appointed and qualified. This membership on the Commission shall continue to be filled by appointment by the Governor and each such subsequent appointment shall be for a term of five years. The member appointed by the Governor shall be a citizen of the State of North Carolina. In the event that this position on the Commission should become vacant by resignation, death or otherwise, a successor to serve for the unexpired term shall be appointed by the Governor within 90 days of the date of the vacancy.

- (6) Any member of the Commission elected or appointed, as the case may be, in accordance with the provisions of either subdivision (2), (3) or (4) shall serve to the end of the term for which such member was elected or appointed, as the case may be, and until such member's successor shall have been elected or appointed, as the case may be, and qualified.
- (7) No member of the Commission shall be allowed to serve for two successive full terms, but this shall not prevent a member elected or appointed to complete an unexpired term, which unexpired term is less than a full five years, from being elected to one successive full five-year term.
- (8) All members of the Commission before assuming the duties of their office shall take an oath for the faithful performance of their duties. (1967, c. 1197, s. 1; 1975, c. 837.)

§ 58-241.8. Duties of Commission; meetings; Burial Administrator; secretary. — It shall be the duty of the North Carolina Mutual Burial Association Commission to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules and regulations adopted pursuant to this Article; to assist the Burial Association Administrator with prosecution of violations of this Article or rules and regulations adopted pursuant thereto; to counsel with and advise the Burial Association Administrator in the performance of his duties and to protect the interest of members of mutual burial associations.

The North Carolina Mutual Burial Association Commission, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Commission is authorized and directed to adopt specific rules and regulations to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules and regulations shall, if located in North Carolina, be a funeral establishment registered under the provisions of G.S. 90-210.17 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules and regulations adopted by the Commission pursuant to this Article.

All rules and regulations heretofore adopted by the Burial Association Administrator in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the Burial Association Commission as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.

The Commission shall hold regular meetings at least twice each year, and more often if called by the chairman in Raleigh, or such place in North Carolina as the chairman may direct. Special meetings of the Commission may also be called in Raleigh or such other place in North Carolina as they may direct, by a majority of the Commission.

The Burial Association Administrator shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.

All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having intercounty circulation in North Carolina.

Members of the Commission shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Commission shall be entitled to actual expenses when attending regular or special meetings of the Commission held other than in Raleigh. All expenses of the Commission shall be paid from funds coming to the Administrator pursuant to this Article. (1967, c. 1197, s. 2; 1971, c. 1151; 1973, c. 1147, s. 1; 1975, c. 837.)

§ 58-241.9. Requirements as to rules and bylaws. — All burial associations now operating within the State of North Carolina, and all burial associations hereafter organized and operating within the State of North Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be, which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which benefit shall consist of a funeral in cash or merchandise and service, with no free embalming or free ambulance service included in such benefits. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars (\$50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars (\$200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars (\$100.00)) or a quadruple benefit (for a total benefit of two hundred dollars (\$200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article

6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars (\$100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars (\$100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar (\$50.00) benefit who increases his benefit from fifty dollars (\$50.00) to one hundred dollars (\$100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall control the increase of benefits from fifty dollars (\$50.00) to one hundred dollars (\$100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Burial Association Administrator may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said

office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Administrator or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Administrator or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Administrator to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Administrator, it is necessary to audit the books of any burial association more than three times in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of three per calendar year, provided that no more than three audits may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the North Carolina Mutual Burial Association Commission an annual report of its financial condition on a form furnished to it by the North Carolina Burial Association Administrator. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission shall levy and collect a penalty of twenty-five dollars (\$25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Commission to the burial association of such secretary or secretary-treasurer shall be guilty of a misdemeanor and shall be punished by a fine of not in excess of one hundred dollars (\$100.00) and imprisoned for not in excess of 30 days, or both fined and imprisoned. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Commission to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided,

that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

ASSESSMENT RATE FOR AGE GROUPS:

First to tenth birthday (\$50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday (\$100.00) benefit	ten cents (10¢)
Thirtieth to fiftieth birthday (\$100.00) benefit	twenty cents (20¢)
Fiftieth to sixty-fifth birthday (\$100.00) benefit	thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars (\$100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar (\$100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar (\$50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred dollar (\$100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to

the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.17 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member before funeral arrangements are made. Provided, however, that if the person or persons making the funeral arrangements for such deceased member have no knowledge of the deceased person's membership in such burial association, then the person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in [G.S. 58-241.24]. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in [G.S. 58-241.24], do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the North Carolina Burial Association Administrator who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13 (a). All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date plus any amount of the thirty percent (30%) allowed from and after that date for operating expenses as set forth in paragraph (a) above and not actually expended in the year allowed. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars (\$21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars (\$21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars (\$21.00) per member. If the reserve account shall at any time exceed twenty-one dollars (\$21.00) per member, amounts in excess of twenty-one dollars (\$21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general

circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina. (1941, c. 130, s. 4; 1943, c. 272, ss. 1, 2; 1945, c. 125, s. 1; 1947, c. 100, s. 1; 1949, c. 201, ss. 1, 2; 1953, c. 1201; 1955, c. 259, ss. 3, 4; 1967, c. 1197, s. 4; 1969, c. 1041, ss. 2, 3; 1973, c. 688; 1975, c. 837.)

Editor's Note. — The bracketed references to § 58-241.24 in Articles 11 and 12 of this section as set out above have been substituted by the

editors for obviously incorrect references to a nonexistent section in Session Laws 1975, c. 837.

§ 58-241.10. Limitation of soliciting agents; licensing and qualifications; officers exempt from license; issuance of membership certificates. — Each burial association shall have for each funeral home sponsoring the said burial association not more than five agents or representatives soliciting members other than the secretary-treasurer and president, and before any agent or representative shall or may represent any burial association in North Carolina, he or she shall first apply to the Burial Association Administrator of North Carolina for a license, and the Burial Association Administrator shall have full power and authority to issue such license upon proof satisfactory to such Administrator that such person is capable of soliciting burial association memberships, is of good moral character and recommended by the association in behalf of which such membership solicitations are to be made. The Burial Association Administrator may reject the application of any person who does not meet the requirements as to capacity and moral fitness. The Burial Association Administrator may, upon proof satisfactory to him that said licensed agent has violated any section of this law, revoke said license. Upon the issuing of a license to solicit membership in any burial association, such person shall be required to pay in cash, at the time of issuing license to such applicant, to the Burial Association Administrator, the sum of five dollars (\$5.00); moneys derived from this fee or charge, are to be and remain in the department or office of such Burial Association Administrator, for supervision of burial associations in this State, subject to withdrawal for expenses of supervision by authority of the Burial Association Administrator. It shall not be necessary that the president or secretary-treasurer of any burial association obtain a license for soliciting membership in the association of which such person is president or secretary-treasurer. Membership certificates shall not be issued by a solicitor in the field, but shall be reported to the office of the association and there issued and a record made of such issuance at the time such certificate is so issued. (1941, c. 130, s. 5; 1945, c. 125, s. 2; 1947, c. 100, s. 2; 1949, c. 201, s. 3; 1975, c. 837.)

§ 58-241.11. Assessments against association for expenses of Burial Association Administrator. — In order to meet the expenses of the supervision of the burial associations, the North Carolina Mutual Burial Association Commission shall prepare an annual budget for the office of the Burial Association Administrator. This budget shall be submitted to and shall be subject to approval by the Advisory Budget Commission. Thereafter, the Burial Association Administrator shall prorate the amount of this budget, over and above any other funds made available to him for this purpose, and assess each association on a pro rata basis in accordance with the number of members of

each association. Each burial association shall remit to the Burial Association Administrator its pro rata part of the total assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in Article 13 of [G.S. 58-241.9.] This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Burial Association Administrator is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Burial Association Administrator to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2; 1973, c. 1476, s. 1; 1975, c. 837.)

Editor's Note. — The bracketed reference to § 58-241.9 in this section as set out above has been substituted by the editors for an obviously

incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.10.

§ 58-241.12. Unlawful to operate without written authority of Commission.

— It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the North Carolina Mutual Burial Association Commission, and any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than 12 months, or both, in the discretion of the court; provided, however, the Burial Association Commission shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this Article, unless it shall be found and established to the satisfaction of the Burial Association Commission that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of this Article. (1941, c. 130, s. 7; 1975, c. 837.)

§ 58-241.13. Revocation of license. — In the event it is proven to the satisfaction of the Burial Association Administrator that any burial association is being operated not in conformity with any provision of this Article, then it shall become the duty of the Burial Association Administrator upon hearing to revoke the license of said burial association and transfer said burial association, its membership and all its assets of every kind and description to another burial association that is found by the Burial Association Administrator to be in good sound financial condition; provided, that if said burial association gives notice of appeal as provided for in [G.S. 58-241.22], then said burial association may continue to operate as before the revocation and until final adjudication. (1945, c. 125, s. 4; 1975, c. 837.)

Editor's Note. — The bracketed reference to § 58-241.22 in this section as set out above has been substituted by the editors for an obviously

incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.23.

§ 58-241.14. Deposit or investment of funds of mutual burial associations.

— Funds belonging to each mutual burial association over and above the amount

determined by the Burial Association Administrator to be necessary for operating capital shall be invested in:

- (1) Deposits in any bank or trust company in this State.
- (2) Obligations of the United States of America.
- (3) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
- (4) Obligations of the State of North Carolina.
- (5) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Burial Association Commission may impose.
- (6) Shares of or deposits in any savings and loan association organized under the laws of this State and shares of or deposits in any federal savings and loan association having its principal office in this State, provided that any such savings and loan association is insured by the United States of America or any agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
- (7) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks, maturing no later than 18 months after the date of purchase.

Violation of the provisions of this section shall, after hearing, be cause for revocation or suspension of license to operate a mutual burial association. (1957, c. 820, s. 1; 1975, c. 837.)

§ 58-241.15. Unclaimed funds of defunct burial association. — Any funds on deposit in any bank or other financial institution in this State in the name of any burial association that is no longer in operation and has no members shall be transferred to the office of the State Burial Administrator for the operation of such office and the purposes provided in G.S. 58-241.12. (1969, c. 1083; 1975, c. 837.)

§ 58-241.16. Penalty for failure to operate in substantial compliance with bylaws. — If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or bylaws not in substantial compliance with the bylaws set forth in [G.S. 58-241.9], the Burial Association Administrator may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a misdemeanor and shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 8; 1975, c. 837.)

Editor's Note. — The bracketed reference to § 58-241.9 in this section as set out above has been substituted by the editors for an obviously

incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.10.

§ 58-241.17. Penalty for wrongfully inducing person to change membership. — Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed bylaws, or who shall offer any rebate, gratuity or refund to cause a member

of one association to change membership to another association, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 9; 1975, c. 837.)

§ 58-241.18. Penalty for making false and fraudulent entries. — Any person or burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the Burial Association Administrator or his deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the Burial Association Administrator, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned in the common jail for not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 10; 1945, c. 125, s. 5; 1975, c. 837.)

§ 58-241.19. Accepting applications without collecting fee and first assessment. — Any burial association official, agent or representative, or any other person who shall accept any application for membership in any association without collecting the membership fee and first assessment due thereon from any such person making such an application for membership, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned not less than 12 months, or both, in the discretion of the court.

Any burial association official, agent or representative, or any other person who shall accept an application for an additional benefit from a member of a burial association without collecting the additional membership fee and the additional assessment due thereon from any such person making such an application for an additional benefit shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 11; 1975, c. 837.)

§ 58-241.20. Removal of secretary-treasurer for failure to maintain proper records. — Any burial association secretary-treasurer who fails to maintain records to the minimum standards required by the Burial Association Administrator shall be by such Administrator removed from office and another elected in his stead, such election to be immediate and by the board of directors of said burial association upon notice of such removal. (1941, c. 130, s. 12; 1975, c. 837.)

§ 58-241.21. Free services; failure to make proper assessments, etc., made a misdemeanor. — Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned for not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 13; 1967, c. 1197, s. 5; 1975, c. 837.)

§ 58-241.22. Right of appeal upon revocation or suspension of license. — Upon the revocation or suspension of any license or authority by the North Carolina Burial Association Administrator, under any of the provisions of this Article, the said association or individual whose license or authority has been

revoked or suspended shall have the right of appeal from the action of the Burial Association Administrator in revoking or suspending such license or authority to the Superior Court of Wake County or to the superior court of the county in which the said association or the said individual is domiciled or, upon agreement of the parties to the appeal, to any other superior court of the State. The association or individual appealing from the order of the Burial Association Administrator shall give notice of appeal in writing to the Burial Association Administrator, with a copy of such notice to the clerk of the superior court to which the appeal is taken, within 10 days of the date of notice of the order revoking or suspending the said license or authority and shall pay such appeal fees to the clerk of superior court as are required by law. Within 30 days after receipt of the notice of appeal, the Burial Association Administrator shall file with the clerk of the superior court of the county in which the appeal is to be heard the decision of the Burial Association Administrator. Upon receipt of such decision, the clerk of superior court shall place the matter upon the civil issue docket of the superior court and the same shall be heard de novo. Pending such appeal, the burial association or individual whose license or authority has been suspended or revoked shall continue to operate or function as before the revocation or suspension and until final adjudication by the superior court. (1941, c. 130, s. 14; 1943, c. 272, s. 4; 1957, c. 820, s. 3; 1973, c. 108, s. 20; 1975, c. 837.)

§ 58-241.23. Bond of secretary or secretary-treasurer of burial associations. — The secretary or secretary-treasurer of each burial association shall, before entering upon the duties of his office, and for the faithful performance thereof, execute a bond payable to the Burial Association Administrator as trustee for the burial association in some bonding company licensed to do business in this State, to be approved by the Burial Association Administrator. Said bond shall be in an amount not less than one thousand dollars (\$1,000), nor more than ten thousand dollars (\$10,000), in the discretion of the Administrator, for those associations whose assets, as determined by the Administrator's audit, are ten thousand dollars (\$10,000) or less. For those associations whose assets, as determined by the Administrator's audit, are in excess of ten thousand dollars (\$10,000), said bond shall be in an amount of ten thousand dollars (\$10,000) plus twenty-five per centum (25%) of all assets over ten thousand dollars (\$10,000); provided, however, that the bond required by this section shall not in any event exceed fifty thousand dollars (\$50,000). If any association operates a branch or subsidiary and the officers of both associations are the same, for purposes of this section, it shall be treated as one association. Any burial association, with the consent of the Burial Association Administrator, may give a bond secured by a deed of trust on real estate situated in North Carolina, in lieu of procuring said bond from a bonding company. The bond thus given shall not be acceptable in excess of the ad valorem tax value for the current year of the real estate securing said bond. The deed of trust shall be recorded in the county or counties wherein the land lies and shall be deposited with the Burial Association Administrator, name the Administrator as trustee for the burial association and must constitute a first lien on the property secured by the deed of trust. Said deed of trust shall contain a description of the encumbered property by metes and bounds together with evidence by title insurance policy or by certificate of an attorney-at-law, certifying that said trustor is the owner of a marketable fee simple title to such lands. (1941, c. 130, s. 15; 1943, c. 272, s. 5; 1967, c. 985, s. 2; 1975, c. 837.)

§ 58-241.24. Assessments. — Every burial association now or hereinafter organized shall make 12 assessments, or their equivalent, per year per member.

The Burial Association Administrator shall order any association to make more than 12 assessments per year when, after notice and hearing, it shall appear to the Burial Association Administrator that the death loss of any association so requires in order to protect the interest of the members. (1943, c. 272, s. 6; 1969, c. 1041, s. 1; 1971, c. 650; 1975, c. 837.)

§ 58-241.25. Making false or fraudulent statement a misdemeanor. — Any officer or employee of any burial association authorized to do business under this Article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for the purpose of obtaining money or any benefit from any burial association transacting business under this Article, or who shall make any false financial statement to the Burial Association Administrator or to the Burial Association Commission or to the membership of the burial association of which such person is an officer or employee shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1943, c. 272, s. 6; 1975, c. 837.)

§ 58-241.26. Statewide organization of associations. — It shall be lawful for the several mutual burial associations of the State of North Carolina, in good standing, to organize and provide for a statewide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the State of North Carolina. Such organization shall be known as the North Carolina Burial Association, Incorporated, and shall be composed of members who are lawfully operating burial associations in this State and who pay their dues to such association. (1941, c. 130, s. 16; 1975, c. 837.)

§ 58-241.27. Article deemed exclusive authority for organization, etc., of mutual burial associations. — This Article shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the State of North Carolina, and such associations shall not be subject to any other laws respecting insurance companies of any class. (1941, c. 130, s. 17; 1975, c. 837.)

§ 58-241.28. Operation of association in violation of law prohibited. — No person, firm or corporation shall operate as a burial association in this State unless incorporated under the laws of the State of North Carolina and unless such association shall be operated in compliance with all the provisions of this Article, and unless such association shall be licensed and approved by the North Carolina Mutual Burial Association Commission. (1941, c. 130, s. 18; 1975, c. 837.)

§ 58-241.29. Member in armed forces failing to pay assessments; reinstatement. — If a member of a burial association who is in the military or naval forces of the United States fails to pay any assessment, he shall be in bad standing, and unless and until restored, shall not be entitled to benefits. However, the said member shall be reinstated in the burial association upon application made by him at any time until 12 months after his discharge from the military or naval forces of the United States, notwithstanding his physical condition and without the payment of assessments which have become due during his service in the military or naval forces of the United States. Benefits will be in force immediately after such reinstatement. (1943, c. 732, s. 2; 1975, c. 837.)

§ 58-241.30. Hearing by Administrator of dispute over liability for funeral benefits; appeal. — In case of a disagreement between the representative of a deceased member of any burial association and such deceased member's burial association a hearing may be held by the Burial Association Administrator, on request of either party, to determine whether the association is liable for the benefits set forth in the policy issued to the said deceased member of said burial association. The Burial Association Administrator shall render a decision which shall have the same force and effect as judgments rendered by courts of competent jurisdiction in North Carolina. Either party may appeal from the decision of the Burial Association Administrator. Appeal shall be to the district court division of the General Court of Justice in the county in which the burial association is located. The procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of Chapter 7A of the General Statutes of North Carolina regulating appeals from the magistrate to the district court. Upon appeal trial shall be de novo. (1947, c. 100, s. 5; 1975, c. 837.)

§ 58-241.31. Administrator authorized to subpoena witnesses, administer oaths and compel attendance at hearings. — For the purpose of holding hearings the Burial Association Administrator shall have power to subpoena witnesses, administer oaths, and compel attendance of witnesses and parties. (1957, c. 820, s. 2; 1975, c. 837.)

SUBCHAPTER V. AUTOMOBILE INSURANCE.

ARTICLE 25.

Regulation of Automobile Liability Insurance Rates.

§ 58-246. North Carolina Automobile Rate Administrative Office created; objects and functions; hearings on rates.

The language of this section is an express legislative mandate to establish classifications for premium rate purposes "as far as practicable in accordance with the hazard of the different classes of risks." State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

Authority of Rate Office. — This Chapter clearly reveals the intent of the General Assembly to vest the Rate Office with primary authority to fix, adjust and propose rates subject to the approval or disapproval of the Commissioner of Insurance. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Such authority as the Commissioner has with respect to motorcycle liability insurance rates is contained in this Article, which also provides for the creation and prescribes the functions of the North Carolina Automobile Rate Administrative Office. State ex rel. Commissioner of Ins. v. North Carolina Auto.

Rate Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

"Automobile" liability insurance includes "motorcycle" liability insurance and the same laws apply to both. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

In the absence of a finding that all drivers, regardless of their age, sex, or any other criteria, of "motorcycles, motor scooters, motorbikes and other similar motor vehicles not used for commercial purposes," regardless of the size, weight, or power of such vehicles, constitute a reasonably homogenous group sharing essentially the same hazard for liability insurance purposes, the Commissioner of Insurance exceeded the authority delegated to him by the legislature in attempting to adopt in the place of an existing motorcycle liability insurance plan a one-class plan for all motorcycle owners. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate

Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

Quoted in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 228, 210 S.E.2d 439 (1974).

§ 58-248. Personnel and assistants; general manager; submission of rate proposals to Commissioner of Insurance; approval or disapproval.

Power of Commissioner to Fix Rates. —

There is no provision in this Chapter giving the Commissioner concurrent authority with the Rate Office to fix or reduce rates. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Authority of Rate Office. — This Chapter clearly reveals the intent of the General Assembly to vest the Rate Office with primary authority to fix, adjust and propose rates subject to the approval or disapproval of the Commissioner of Insurance. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

The authority for the selection of rate-making techniques which will properly account for the effects of the energy crisis on automobile liability insurance rates lies primarily in the Rate

Office until the Commissioner finds that a proposed accounting by the Rate Office will result in unreasonable or unfair profits or that the Rate Office has engaged in undue delay in reacting to the situation. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Approval of Proposals. — The Commissioner has duty to consider rate proposals in accordance with standards contained in this section and has no authority merely to accept a proposal as being true and accurate for purposes of entering an interim order. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 228, 210 S.E.2d 439 (1974).

§ 58-248.1. Order of Commissioner revising improper rates, classifications and classification assignments.

Commissioner's Power to Fix Rates. —

The power and authority of the Commissioner of Insurance emanate from the General Assembly and are limited by legislative prescription. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

When the first paragraph of this section is read aright it will not support the conclusion that the Commissioner has blanket authority thereunder to consider immediate emergency situations such as the energy crisis and enter interim rate orders based thereon. To so construe the statute ignores the function of the Rate Office and infringes upon its authority to fix, adjust and propose rates. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

There is no provision in this Chapter giving the Commissioner concurrent authority with the Rate Office to fix or reduce rates. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

When this section is construed in pari materia with the other provisions of Chapter 58, the legislative grant of authority to the Commissioner to order an alteration or revision in the rates charged or filed presupposes the failure of the Rate Office to perform its rate-making duties faithfully. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Before the Commissioner can order a rate alteration or revision under this section, he must first make a determination that the rates charged or filed are excessive, inadequate, unreasonable, unfairly discriminatory or otherwise not in the public interest. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

The Commissioner has no authority merely to accept a proposal as being true and accurate for purposes of entering an interim order. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

Proposed rates shall not be deemed unreasonable, inadequate, unfairly discriminatory or not in the public interest, if such proposed rates make adequate provision for premium rates for the future which will provide for anticipated loss and loss adjustment expenses, anticipated expenses attributable to the selling and servicing of the line of insurance involved and a provision for a fair and reasonable underwriting profit. *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 287 N.C. 192, 214 S.E.2d 98 (1975).

Effect of Energy Crisis. — The authority for the selection of rate-making techniques which will properly account for the effects of the energy crisis on automobile liability insurance rates lies primarily in the Rate Office until the Commissioner finds that a proposed accounting by the Rate Office will result in unreasonable or unfair profits or that the Rate Office has engaged in undue delay in reacting to the situation. *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 287 N.C. 192, 214 S.E.2d 98 (1975).

§ 58-248.2. Insurance policy must conform to rates, etc., filed by rating bureau; when higher rate allowed.

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

The sanctions provided by statutes for violations of the antirebate provisions are

§ 58-248.9: Repealed by Session Laws 1975, c. 666, s. 2.

ARTICLE 25A.

North Carolina Motor Vehicle Reinsurance Facility.

§ 58-248.34. Plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision or amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(1975, c. 19, s. 18.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "revision or amendment" for "revision of amendment" in subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

ARTICLE 26.

Nature of Policies.

§ 58-251.6. Insurers and others to afford coverage for active medical treatment in tax-supported institutions. — (a) No policy providing benefits for charges of hospitals or physicians shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Insurance, after May 21, 1975, unless such policy provides for the payment of benefits for charges made for medical care rendered in or by

duly licensed State tax-supported institutions, including charges for medical care of cerebral palsy, other orthopedic and crippling disabilities, mental and nervous diseases and disorders, mental retardation, alcoholism and drug or chemical dependency, and respiratory illness, on a basis no less favorable than the basis which would apply had the medical care been rendered in or by any other public or private institution or provider. The term "State tax-supported institutions" shall include community mental health centers and other health clinics which are certified as Medicaid providers.

(b) No policy shall exclude payment for charges of a duly licensed State tax-supported institution because of its being a specialty facility for one particular type of illness nor because it does not have an operating room and related equipment for the performance of surgery, but it is not required that benefits be payable for domiciliary or custodial care, rehabilitation, training, schooling, or occupational therapy.

(c) The restrictions and requirements of this section shall not apply to any policy which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy, but shall apply only to those group policies of insurance delivered, issued for delivery, reissued or renewed in this State on and after July 1, 1975. (1975, c. 345, s. 1.)

§ 58-251.7. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait. — No insurance company licensed in this State pursuant to the provisions of this Chapter shall refuse to issue or deliver any policy (regardless of whether any of such policies shall be defined as individual, family, group, blanket, franchise, industrial or otherwise) which is currently being issued for delivery in this State, and which affords benefits or coverage for any medical treatment or service authorized or permitted to be furnished by a hospital, clinic, family health plan, neighborhood health plan, health maintenance organization, physician, physician's assistant, nurse practitioner or any medical service facility or personnel by reason of the fact that the person to be insured possesses sickle cell trait or hemoglobin C trait, nor shall any such policy issued and delivered in this State carry a higher premium rate or charge by reason of the fact that the person to be insured possesses said trait. (1975, c. 599, s. 1.)

Editor's Note. — Session Laws 1975, c. 599, s. 3, makes the act effective July 1, 1975, and provides that it shall apply to policies of

insurance delivered or issued for delivery in this State on or after July 1, 1975.

ARTICLE 27.

General Regulations.

§ 58-260.2: Repealed by Session Laws 1975, c. 660, s. 4.

Editor's Note. — Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act.

With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

SUBCHAPTER VIII. CREDIT LIFE INSURANCE AND
CREDIT ACCIDENT AND HEALTH INSURANCE.

ARTICLE 32.

*The North Carolina Act for the Regulation of Credit Life
Insurance and Credit Accident and Health Insurance.*

§ 58-341. **Application of Article.** — All credit life insurance and all credit accident and health insurance as defined herein and written in connection with direct loans, consumer credit installment sale contracts of whatever term permitted by G.S. 25A-33 or other credit transactions shall be subject to the provisions of this Article, except credit insurance written in connection with direct loans of more than 10 years' duration. The provisions of this Article shall be controlling as to such insurance and no other provisions of this Chapter shall be applicable unless otherwise specifically provided; nor shall such insurance be subject to the provisions of this Article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

This Article may be cited as "The North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance." (1975, c. 660, s. 1.)

Editor's Note. — Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act.

With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

§ 58-342. **Definitions.** — As used in this Article, unless the context requires otherwise, the following words or terms shall have the meanings herein ascribed to them, respectively:

- (1) "Commissioner" means the Commissioner of Insurance;
- (2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction as defined in G.S. 58-254.8;
- (3) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction as defined in G.S. 58-195.2;
- (4) "Credit life insurance agent" means an agent of an insurance company licensed in this State who is authorized to solicit, negotiate or effect credit life insurance or accident and health insurance, or both, but only to the extent as is authorized and limited in this Article;
- (5) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them;

- (6) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;
- (7) "Indebtedness" means the total amount payable for the term of the loan by debtor to creditor in connection with a loan or other credit transaction, including principal, interest, allowable charges, and any premiums authorized hereunder;
- (8) "Joint life coverage" means credit life insurance covering two or more lives, the entire amount of insurance being payable upon the death of the first insured debtor to die. (1975, c. 660, s. 1.)

§ 58-343. Forms of insurance which are authorized. — Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of accident and health insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;
- (3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;
- (4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage. (1975, c. 660, s. 1.)

§ 58-344. Amount. — (a) Credit Life Insurance. —

- (1) Credit life insurance may be written on either a level term or decreasing term plan for an initial amount not in excess of the total amount repayable under the contract of indebtedness. When decreasing term coverage is written in connection with indebtedness repayable on an installment basis, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.
- (2) Notwithstanding the provisions of the above subdivision, insurance on seasonal credit line commitments (such as may be found in agricultural credit transactions) not exceeding one year in duration may be written up to the amount of the loan commitment, whether or not the full amount of the commitment has been advanced by the creditor, on a nondecreasing or level term plan.
- (3) Notwithstanding the provisions of subdivision (a)(1) of this or any other section, insurance on education credit transaction commitments may be written for the amount of such commitment whether or not the full amount of the commitment has been advanced by the creditor.

(b) Credit Accident and Health Insurance. — The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the indebtedness; and the amount of each monthly benefit shall not exceed the indebtedness divided by the number of months in the term of the loan. A daily benefit equal in amount to one thirtieth of the scheduled monthly payment is permissible. (1975, c. 660, s. 1.)

§ 58-345. Term; termination prior to scheduled maturity. — The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes

obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. The term of such insurance shall not extend more than 15 days beyond the maturity date of the indebtedness or final installment thereof. If the indebtedness is discharged due to prepayment, the insurance in force shall be terminated unless otherwise requested by the insured in writing. If the indebtedness is discharged due to renewal or refinancing prior to such maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in G.S. 58-351. (1975, c. 660, s. 1.)

§ 58-346. Insurance to be evidenced by individual policy; notice of proposed insurance or certificate; required and prohibited provisions; when debtor to receive copy. — (a) All individual credit life insurance and credit accident and health insurance sold shall be evidenced by an individual policy. All group insurance sold where any part of the premium is paid by the debtors or by the creditors from identifiable charges collected from the insured debtors shall be evidenced by a certificate of insurance.

(b) Each individual policy or certificate of credit life insurance, and/or credit accident and health insurance shall set forth the name and home-office address of the insurer, the identity of the insured debtor by name or otherwise, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance if not disclosed in other documents furnished to the debtor, a description of the coverage including the amount and term thereof, and any exceptions, limitations or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness, and wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary other than the creditor named by the debtor, or to his estate.

(c) No individual policy of credit life insurance or credit accident and health insurance and no group policy of credit life insurance or credit accident and health insurance shall be delivered or issued for delivery in this State unless each contains in substance all of the following provisions:

- (1) In each policy there shall be a provision that the policy, or the policy and application therefor, if any, or if a copy of the application is endorsed upon or attached to the policy when issued, shall constitute the entire insurance contract between the parties, and that all statements made by the creditor or by the individual debtors shall, in the absence of fraud, be deemed representations and not warranties.
- (2) In each such policy there shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force on such insured for a period of two years during such person's lifetime, and prior to the date on which the claim thereunder arose.
- (3) In each such policy there shall be a provision that when a claim for the death or disability of the insured arises thereunder, settlement shall be made upon receipt of due proof of such death or such disability.

- (4) On the face of each such policy there shall be placed a title which shall briefly and accurately describe the nature and form of the policy.
- (5) Each such policy, including rider and endorsement, shall be identified by a form number in the lower left-hand corner of the first page thereof, and no restriction, condition or provision in or endorsed on such policy shall be valid unless such provision or condition is printed in type as large as eight-point type.
- (6) In each such policy there shall be a provision that the insured debtor shall have the right to rescind the insurance policy or certificate of insurance upon giving written notice to the insurer within 15 days from the date the insured debtor received such policy or certificate.
- (d) No individual policy of credit life insurance or credit accident and health insurance [and] no group policy of credit life insurance or credit accident and health insurance shall be delivered or issued for delivery in this State if it contains any provision:
 - (1) Limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action accrues; or
 - (2) To the effect that the agent soliciting the insurance is the agent of the person insured under the policy, or making the acts or representations of such agent binding upon the person so insured under the policy.
- (e) If said individual policy or certificate of group insurance is not delivered to the debtor at the time the indebtedness is incurred or mailed to the debtor within 30 days thereafter, a written notification must be furnished to the debtor within the 30-day period, which notification shall set forth the following:
 - (1) The name and home-office address of the insurer;
 - (2) The identity of the debtor, by name or otherwise;
 - (3) The premium or identifiable charge to the debtor, if any, separately in connection with credit life insurance and credit accident and health insurance;
 - (4) The amount and term of the coverage provided, if possible, otherwise a clear description of the means of determining the amount and time of expiry;
 - (5) A brief description of the coverage provided;
 - (6) A statement that, if the insurance is declined by the insurer or otherwise does not become effective, any premium or identifiable charge will be refunded or credited to the debtor; and
 - (7) A statement that, upon acceptance by the insurer, the insurance coverage provided shall become effective as specified in G.S. 58-345.

Any portion of the information required in said notification may be furnished by other documents, if copies of such documents are attached to said notification. If an insurance policy or certificate of insurance is not delivered to the insured debtor at the time the indebtedness is incurred, he shall be furnished at the time the indebtedness is incurred written notice that he shall have the right to rescind the insurance policy or certificate of insurance upon giving written notice to the insurer within 15 days from the date the insured debtor receives such policy or certificate. (1975, c. 660, s. 1.)

§ 58-347. Forms to be filed with Commissioner; approval or disapproval by Commissioner. — (a) All forms of policies, certificates of insurance, notices of proposed insurance, endorsements and riders intended for use in this State shall be filed with the Commissioner.

(b) The Commissioner shall, within 30 days after the filing of any such policies, certificates of insurance, notices of proposed insurance, endorsements and riders, disapprove any such form if it contains provisions which are contrary to, or not in accordance with, any provision of this Article or of any rule or regulation promulgated thereunder. Unless disapproved in writing within such 30 days, a form shall be deemed approved.

(c) If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form for a period of 60 days, or until the Commissioner has issued a final order after hearing, whichever is earlier. In such notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, endorsement or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

(d) The Commissioner may, at any time after a hearing held not less than 20 days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in subsection (b) above. The written notice of such hearing shall state the reason for the proposed withdrawal.

(e) No insurer shall issue such forms or use them after the effective date of such withdrawal. (1975, c. 660, s. 1.)

§ 58-348. General premium rate standard. — (a) Benefits provided by credit life and credit accident and health insurance written under this Article shall be reasonable in relation to the premium charge. This requirement is satisfied if the premium rates to be charged are no greater than those premium rates set forth in G.S. 58-349 and 58-350 of this Article for benefits as described in those sections. The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(b) The premium or cost of credit life or disability insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State.

(c) If premiums are to be determined according to the age of the insured debtor or by age brackets, an insurer may determine premium rates on a basis actuarially consistent with the rates provided in G.S. 58-348, but such rates shall be filed with and approved by the Commissioner. (1975, c. 660, s. 1.)

§ 58-349. Credit life insurance rate standards. — (a) The premium rate standards set forth below are applicable to plans of credit life insurance with or without requirements for evidence of insurability:

- (1) Which contain no exclusions or no exclusions other than suicide; and
- (2) Which contain no age restrictions, or only age restrictions not making ineligible for the coverage
 - a. Debtors under 65 at the time the indebtedness is incurred; or
 - b. Debtors who will not have attained age 66 on the maturity date of the indebtedness.

(b) Rates for use with forms which are more restrictive in any material respect shall reflect such variations in the form or lower rates to the extent that a significant difference in claim cost can reasonably be anticipated unless the insurer demonstrates that such lower rate is not appropriate.

(c) If premiums are payable in one sum in advance, for decreasing term life insurance on indebtedness repayable in substantially equal monthly installments, a premium not exceeding eighty cents (80¢) per one hundred dollars (\$100.00) of initial insured indebtedness per year is authorized.

(d) The premium rate of joint life insurance coverage shall not exceed one and two-thirds ($1\frac{2}{3}$) the permitted single life rate.

(e) For level term life insurance, a premium rate of one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) per year is authorized.

(f) For policies for which monthly premiums are charged on a basis of the then-outstanding balances, a monthly premium per one thousand dollars (\$1,000) of outstanding balances is authorized, based on the following formula:

$$Op_n = \frac{20}{n + 1} SP_n$$

where SP_n = Single premium rate per one hundred dollars (\$100.00) of initial insured indebtedness repayable in n equal monthly installments.

OP_n = Monthly outstanding balance premium rate per one thousand dollars (\$1,000).

n = Original repayment period, in months.

(g) For credit life insurance on a basis other than the foregoing, premiums charged shall be actuarially equivalent. (1975, c. 660, s. 1.)

§ 58-350. Credit accident and health insurance rate standards. — (a) The rate standards set forth below shall be applicable for contracts which contain a provision excluding or denying claim for disability resulting from preexisting illness, disease or physical condition, for which the debtor received medical advice, consultation, or treatment within the six-month period immediately preceding the effective date of the debtor's coverage and if said disability occurs within the six-month period immediately following such date, but contain no other provision which excludes or restricts liability in the event of disability caused in a certain specified manner, except that they may contain provisions excluding or restricting coverage in the event of pregnancy; intentionally self-inflicted injuries; sickness resulting from intoxication, addiction to alcohol or narcotics, or from the use thereof unless administered on the advice of a physician; flight in nonscheduled aircraft; war; military service; and may contain age restrictions similar to those mentioned for credit life insurance in G.S. 58-349.

(b) A policy of credit accident and health insurance may not define "disability" any more restrictively than the inability of the insured to perform his occupation or any occupation for which he is qualified by education, training or experience.

(c) Any policy to which the rates below apply may require the debtor to be gainfully employed on the effective date of the insurance.

(d) If premiums are payable in one sum in advance for the entire duration of the indebtedness, for insurance with a preexisting exclusion as defined above, the following premiums are authorized:

*Single Premium Rates Per \$100 of Initial
Insured Indebtedness*

<i>No. of Months in which Indebtedness is Repayable</i>	<i>Nonretroactive Benefits</i>		<i>Retroactive Benefits</i>		
	<i>14-Day Wait</i>	<i>30-Day Wait</i>	<i>7-Day Wait</i>	<i>14-Day Wait</i>	<i>30-Day Wait</i>
1-12	\$1.65	\$1.10	\$3.00	\$ 2.42	\$1.65
13-24	2.20	1.65	4.00	3.30	2.20
25-36	2.75	2.20	5.00	4.18	2.75
37-48	3.30	2.75	6.00	5.06	3.30
49-60	3.85	3.30	7.00	5.94	3.85
61-72	4.40	3.85		6.82	4.40
73-84	4.95	4.40		7.70	4.95
85-96	5.50	4.95		8.58	5.50
97-108	6.05	5.50		9.46	6.05
109-120	6.60	6.05		10.34	6.60

(e) For policies for which monthly premiums are charged on a basis of the then-outstanding balances, a monthly premium per one thousand dollars (\$1,000) of outstanding balances is authorized, based on the following formula:

$$Op_n = \frac{20}{n + 1} SP_n$$

where SP_n = Single premium rate per one hundred dollars (\$100.00) of initial indebtedness repayable in n equal monthly installments.

Op_n = Monthly outstanding balance premium rate per one thousand dollars (\$1,000)

n = Original repayment period, in months.

(f) Premium rate standards for other benefit plans and for indebtedness repayable in installments other than as indicated above shall be actuarially consistent with the above rate standards. (1975, c. 660, s. 1.)

§ 58-351. **Premium refunds or credits.**—(a) Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto.

(b) Except as provided in subsection (c) of this section, the refund of premiums in the case of reducing term credit life insurance or credit accident and health insurance shall be equal to the amount computed by the sum-of-digits formula commonly known as the "Rule of 78"; and the refund of premium in the case of level term credit life insurance shall be equal to the pro rata unearned gross premium.

(c) With respect to insurance written pursuant to G.S. 53-189, the refund of premiums in the case of credit life insurance or credit accident insurance shall be equal to the pro rata unearned gross premiums if refunded during the first 60 days of the policy, and equal to the sum-of-digits formula known as the "Rule of 78" method if refunded thereafter.

(d) No refund need be made if the amount thereof is less than one dollar.

(e) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give

written notice to such debtor and shall promptly make an appropriate credit to the account. (1975, c. 660, s. 1.)

§ 58-352. Issuance of policies. — All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance. (1975, c. 660, s. 1.)

§ 58-353. Claims. — (a) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(b) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer or be paid by such other specified method upon the direction of the beneficiary who is entitled thereto pursuant to the policy provisions.

(c) No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer. (1975, c. 660, s. 1.)

§ 58-354. Existing insurance — choice of insurer. — When credit life insurance or credit accident and health insurance is required for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this State. (1975, c. 660, s. 1.)

§ 58-355. Enforcement. — The Commissioner may, after notice and hearing, issue rules and regulations necessary for the implementation of this Article. Whenever the Commissioner finds that there has been a violation of this Article or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the Commissioner on the date specified unless sooner withdrawn by the Commissioner or a stay thereof has been ordered by a court of competent jurisdiction. The provisions of G.S. 58-345, 58-346, 58-347, 58-348, 58-349, 58-350, and 58-351 shall not be operative until 90 days after June 18, 1975, and the Commissioner in his discretion may extend by not more than an additional 90 days the initial period within which the provisions of said sections shall not be operative. (1975, c. 660, s. 1.)

§ 58-356. Judicial review. — Any party to the proceeding affected by an order of the Commissioner shall be entitled to judicial review by following the procedure set forth in G.S. 58-9.3 to 58-9.6. (1975, c. 660, s. 1.)

§ 58-357. Penalties. — In addition to any other penalty provided by law, any person, firm or corporation which willfully violates an order of the Commissioner

after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of North Carolina a sum not to exceed two hundred fifty dollars (\$250.00) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed one thousand dollars (\$1,000). The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such willful violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in G.S. 58-356. Any creditor who requires credit life insurance or credit accident and health insurance, or both, in excess of the amounts set forth in G.S. 58-344 or who violates the provisions of G.S. 58-354 shall be guilty of a misdemeanor, the penalty for which shall be a fine of five hundred dollars (\$500.00) for each such occurrence or violation. (1975, c. 660, s. 1.)

§ 58-358. Reinsurance. — Any insurance company writing credit life or credit accident and health insurance subject to the provisions of this Article may reinsure its liability under any or all of such insurance with any domestic or foreign life insurance company; provided, that in the event such reinsurance is with a company not authorized to do business within this State and such company does not meet the statutory requirements for admission, the direct writing company shall, notwithstanding such reinsurance, maintain all of the reserves required by the Commissioner of such line of business as if such reinsurance contract or treaty had not been entered into and shall continue primarily responsible for such insurance. (1975, c. 660, s. 1.)

Chapter 59.

Partnership.

Article 2.

Uniform Partnership Act.

Part 3. Relations of Partners
to Persons Dealing with
the Partnership.

Sec.

59-46. Partner by estoppel.

ARTICLE 2.

Uniform Partnership Act.

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-46. Partner by estoppel. — (a) When a person, by words spoken or written, by conduct, or by contract, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(1) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(2) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(1975, c. 732.)

Editor's Note. — The 1975 amendment inserted "by conduct" near the beginning of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Evidence that son was authorized to write checks on father's corporate account does not constitute, in the absence of other fundamental requisites, a partnership in fact. *H-K Corp. v. Chance*, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

Representations Made in Public Manner. — In the absence of representations made by the

defendant personally to third-party creditors and of any expression of consent on the part of the defendant to his son that the son could represent him to be a partner, there is no evidentiary support of the plaintiff's contention that representations were made in a public manner, and under these circumstances, the evidence was not sufficient to warrant submitting the case to the jury upon the theory of partnership by estoppel. *H-K Corp. v. Chance*, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

Part 6. Dissolution and Winding Up.

§ 59-59. "Dissolution" defined.

Applied in *H-K Corp. v. Chance*, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

§ 59-66. Effect of dissolution on partner's existing liability.

Absent an agreement under § 59-48(1), each partner must contribute towards the losses sustained by the partnership according to his

share of the profits. Longley Supply Co. v. Styron, 26 N.C. App. 55, 214 S.E.2d 777 (1975).

Chapter 61.**Religious Societies.****§ 61-3. Title to lands vested in trustees, or in societies.**

The words "shall be and remain forever to the use and occupancy of that church..." do not create an exemption for church property from execution. *Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church*, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

These words have to be considered in the context of the time they were written and of wordage required by ancient English law and custom to create a fee simple estate. *Floyd S.*

Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

Sale of Property under Execution. — There being no provision in our Constitution exempting church property from execution, unless exempted by statute, said property is subject to sale under execution. *Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church*, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

§ 61-4. Trustees may convey property.

Cited in *Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church*, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

§ 61-6. House on vacant land vests title.

Purpose of Section. — This section was enacted in 1778 for purpose of covering those cases where church houses had been built on unused or unappropriated land to which no one had title. *Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church*, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

Sale of Property under Execution. — There being no provision in our Constitution exempting church property from execution, unless exempted by statute, said property is subject to sale under execution. *Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church*, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

Chapter 62.**Public Utilities.****Article 1.****General Provisions.**

Sec.

62-2. Declaration of policy.

62-3. Definitions.

Article 2.**Organization of Utilities Commission.**

62-10. Number, appointment and terms of commissioners; chairmen; vacancies; compensation; practice of law prohibited.

62-13. Chairman to administer and execute internal rules and regulations and direct staff.

62-21. Commission attorney.

Article 3.**Powers and Duties of Utilities Commission.**

62-37. Investigations.

Article 4.**Procedure before the Commission.**

62-60.1. Commission to sit in panels of three.

62-71. Hearings to be public; record of proceedings.

62-76. Hearings by Commission, panel of three commissioners, single commissioner, or examiner.

62-77. Recommended decision of panel of three commissioners, single commissioner or examiner.

62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.

62-81. Special procedure in hearing and deciding rate cases.

Sec.

62-82. Special procedure on application for certificate for generating facility; appeal from award order.

Article 5.**Review and Enforcement of Orders.**

62-90. Right of appeal; filing of exceptions.

62-91. Appeal docketed; title on appeal; priorities on appeal.

62-94. Record on appeal; extent of review.

Article 6.**The Utility Franchise.**

62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities.

Article 7.**Rates of Public Utilities.**

62-133. How rates fixed.

62-134. Change of rates; notice; suspension and investigation.

62-155. Use of electricity during peak-demand periods.

62-156 to 62-159. [Reserved.]

Article 12.**Motor Carriers.**

62-266. Interstate carriers.

Article 14.**Fees and Charges.**

62-300. Particular fees and charges fixed; payment.

ARTICLE 1.**General Provisions.****§ 62-1. Short title.****Editor's Note. —**

Session Laws 1975, c. 243, ss. 1 and 11, provide:

"Section 1. This act shall not terminate the preexisting commission or appointments thereto, or any certificates, permits, orders, rules or regulations issued by it or any other action taken by it, unless and until revoked by

it, nor affect in any manner the existing franchise, territories, tariffs, rates, contracts, service regulations and other obligations and rights of public utilities, unless and until altered or modified by or in accordance with the provisions of Chapter 62 of the General Statutes.

"Sec. 11. Except as herein amended, the provisions of Chapter 62 of the General Statutes

of North Carolina shall remain in full force and effect. To the extent that other laws or clauses of laws are in conflict with the provisions of this

act, such laws and clauses are, to that extent, hereby repealed."

§ 62-2. Declaration of policy. — Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;
- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission. (1963, c. 1165, s. 1; 1975, c. 877, s. 2.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Session Laws 1975, c. 877, s. 5, contains a severability clause.

Purpose of Chapter. —

The provisions of this Chapter, such as § 62-133, designed to assure the utility of adequate revenues, are in the nature of corollaries to the basic proposition that the public is entitled to adequate service at reasonable rates and safeguards against administrative action which would violate constitutional protections by

confiscation of the utility's property. Without such assurance, the owners of capital would not invest it in the utility's bonds or stock and the utility could not provide the plant necessary for the rendering of adequate service. *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 285 N.C. 671, 208 S.E.2d 681 (1974).

The primary purpose of this Chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a

reasonable charge. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681, (1974).

The entire Chapter is a single, integrated plan.

§ 62-3. Definitions. — As used in this Chapter, unless the context otherwise requires, the term:

(23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation;
 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;
 3. Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
 4. Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
- c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
- d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit

water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter.

e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

(30) "Panel" means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission. (1913, c. 127, s. 7; C. S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1; 1967, c. 1094, ss. 1, 2; 1971, c. 553; c. 634, s. 1; cc. 894, 895; 1973, c. 372, s. 1; 1975, c. 243, s. 2; cc. 254, 415.)

Editor's Note. —

The first 1975 amendment added subdivision (30).

The second 1975 amendment inserted "an authority organized under the North Carolina Water and Sewer Authorities Act" near the beginning of the first sentence of paragraph d of subdivision (23).

The third 1975 amendment substituted the language beginning "or consumer-owned corporations" and ending "the governing board of the corporation" for "corporations financed

by the Farmers Home Administration" near the beginning of the first sentence of paragraph d of subdivision (23).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (23) and (30) are set out.

Multistate Foreign Corporation. — There is nothing in the language of Article 8 or of the Public Utilities Act generally to support the contention that Article 8 is not applicable to a multistate foreign corporation engaged in

interstate commerce. State ex rel. Utilities App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. 214, 209 S.E.2d 319 (1974).

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number, appointment and terms of commissioners; chairmen; vacancies; compensation; practice of law prohibited. — (a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1 of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then-current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the

General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then-current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars (\$1,000) additional per annum.

(i) The prohibition of the practice of law by judges provided in G.S. 84-2 shall also apply to all of the commissioners. (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2.)

Editor's Note. —

The first 1975 amendment rewrote this section.

The second 1975 amendment added the second sentence in subsection (e), designated the last sentence in subsection (f) as new subsection (g)

and inserted "a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when" in that new subsection and designated former subsections (g) and (h) as present subsections (h) and (i).

§ 62-13. Chairman to administer and execute internal rules and regulations and direct staff.

(b) The chairman shall determine whether matters pending before the Commission shall be heard initially by the full Commission, by a panel of three commissioners or by a hearing commissioner or hearing examiner and shall assign the members of the Commission to proceedings. The chairman may hear and determine, or assign to a single commissioner or panel for decision, any procedural motion or petition made prior to hearings on the merits of the proceedings, including continuances, extensions, joinders, amendments, motions to strike, orders for examinations and depositions, temporary orders and other motions and orders of a similar nature not determinative of the merits of the controversy.

(1975, c. 243, ss. 9, 10.)

Editor's Note. — The 1975 amendment substituted "panel of three commissioners" for "division of the Commission" in the first sentence, and "panel" for "division" in the second sentence, of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 62-21. Commission attorney.

(c) The Commission is authorized to utilize the Commission attorney or other qualified staff attorneys not involved in the matter being considered as necessary to advise and counsel panel chairmen as to rules of evidence and rules of procedure in the conduct of any proceeding before a panel of three commissioners. (1963, c. 1165, s. 1; 1975, c. 867, s. 3.)

Editor's Note. — The 1975 amendment added subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

ARTICLE 3.

*Powers and Duties of Utilities Commission.***§ 62-31. Power to make and enforce rules and regulations for public utilities.**

Authority to determine adequacy of public utility's service and rates to be charged therefor has been given to the Utilities Commission, not to the Supreme Court or the

Court of Appeals. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-32. Supervisory powers; rates and service.

Authority to determine adequacy of public utility's service and rates to be charged therefor has been given to the Utilities Commission, not to the Supreme Court or to the

Court of Appeals. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-37. Investigations.

(b) If after such an investigation, or investigation and hearing, the Commission, in its discretion, is of the opinion that the public interest shall be served by an appraisal of any properties in question, the investigation of any particular construction, the audit of any accounts or books, the investigation of any contracts, or the practices, contracts or other relations between the public utility in question and any holding or finance agency with which such public utility may be affiliated, it shall be the duty of the Commission to report its findings and recommendation to the Governor and Council of State with request for an allotment from the Contingency and Emergency Fund to defray the expense thereof, which may be granted as provided by law for expenditures from such fund or may be denied. Provided, however, that the Commission is authorized to order any such appraisal, investigations, or audit to be undertaken by a competent, qualified, and independent firm selected by the Commission, the cost of such appraisal, investigation or audit to be borne by the public utility in question. Notwithstanding any other provisions of this Chapter, the Commission is authorized to initiate a full and complete management audit of any public utility company once every five years, by a competent, qualified, and independent firm, such audit to thoroughly examine the efficiency and effectiveness of management decisions among other factors as directed by the Commission. The cost of such audit is to be borne by the particular public utility subject to the audit; provided, however, that carriers subject to regulation by and auditing of the Interstate Commerce Commission shall not be required to bear the expense of additional audit of accounts or management audit required hereunder. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 16; 1941, c. 97; 1963, c. 1165, s. 1; 1975, c. 867, s. 4.)

Editor's Note. — The 1975 amendment added the last three sentences in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 4.

Procedure before the Commission.

§ 62-60.1. Commission to sit in panels of three. — (a) The Utilities Commission shall sit in panels of three commissioners each unless the chairman by order shall set the proceeding for hearing by the full Commission. The chairman of the Commission insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member and that each member sits a substantially equal number of times on different types of proceedings. The chairman shall designate the presiding commissioner of all panels in a rotating manner.

(b) Any order or decision made unanimously by a panel of three commissioners shall constitute the order or decision of the Commission, except as otherwise provided in this Chapter; provided, however, that upon motion of any three commissioners not sitting on the panel, made within 10 days of issuance of such order or decision of the panel, with notice to parties of record, the order or decision of the panel shall thereby be stayed and the full Commission shall review the order or decision of the panel and shall within 30 days of said motion either affirm or modify the order or decision of the panel or remand the matter to the panel for further proceedings; provided that the foregoing shall not limit the right of parties to seek review of such order or decision under G.S. 62-90.

(c) In the event an order or decision of the panel of three is not made unanimously, such order or decision shall be a recommended order only, subject to review by the full Commission, with all commissioners eligible to participate in the final arguments and decision. Review shall take place in accordance with the provisions of G.S. 62-78 and the Commission shall decide the matter in controversy and make appropriate order or decision thereon within 60 days of the date of the recommended order. If within the filing period specified by the panel no exception has been filed by a party, or if the Commission within the same period has not advised the parties that it will conduct a review upon its own motion, the recommended order or decision shall become the final order or decision of the Commission. Nothing in this section shall amend or repeal the provisions of G.S. 62-134.

(d) This section shall become effective July 1, 1975, and shall not affect the utilization of or the procedures outlined for utilization of a hearing commissioner or a hearing examiner as provided for elsewhere in Chapter 62. (1975, c. 243, s. 4.)

§ 62-71. Hearings to be public; record of proceedings. — (a) All formal hearings before the Commission, a panel of three commissioners, a commissioner or an examiner shall be public, and shall be conducted in accordance with such rules as the Commission may prescribe. A full and complete record shall be kept of all proceedings on any formal hearing, and all testimony shall be taken by a reporter appointed by the Commission. Any party to a proceeding shall be entitled to a copy of the record or any part thereof upon the payment of the reasonable cost thereof as determined by the Commission. (1975, c. 243, s. 9.)

Editor's Note. — The 1975 amendment substituted "panel of three commissioners" for "hearing division" near the beginning of the first sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 62-75. Burden of proof.

The burden of proof is upon the utility seeking a rate increase to show the proposed rates are just and reasonable. State ex rel.

Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-76. Hearings by Commission, panel of three commissioners, single commissioner, or examiner. — (a) Except as otherwise provided in this Chapter, any matter requiring a hearing shall be heard and decided by the Commission or shall be referred to a panel of three commissioners or one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this Article, a panel of three commissioners, hearing commissioner or examiner to whom a hearing has been referred by order of the chairman shall have all the rights, duties, powers and jurisdiction conferred by this Chapter upon the Commission. The chairman, in his discretion, may direct any hearing by the Commission or any panel, commissioner or examiner to be held in such place or places within the State as he may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission.

(b) Repealed by Session Laws 1975, c. 243, s. 5.
(1975, c. 243, ss. 5, 9, 10.)

Editor's Note. — The 1975 amendment substituted "panel of three commissioners" for "division of the Commission" in the first sentence, and for "hearing division" in the second sentence, and "panel" for "division" in

the third sentence, of subsection (a) and repealed subsection (b), which formerly provided for hearings by a division of the Commission.

As subsection (c) was not changed by the amendment, it is not set out.

§ 62-77. Recommended decision of panel of three commissioners, single commissioner or examiner. — Any report, order or decision made or recommended by a panel of three commissioners, commissioner or examiner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law and shall be filed with the Commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1975, c. 243, s. 9.)

Editor's Note. — The 1975 amendment substituted "panel of three commissioners" for

"hearing division" near the beginning of the first sentence.

§ 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure. — (a) Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a panel of three commissioners, commissioner or examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission, for the consideration of the Commission, panel, commissioner or examiner, as the

case may be, proposed findings of fact and conclusions of law and briefs or, in its discretion, oral arguments in lieu thereof.

(b) Within the time prescribed by the panel of three commissioners, commissioner, or examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order and a brief in support thereof, provided the time so fixed shall be not less than 15 days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception.

(c) In all proceedings in which a panel of three commissioners, commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed, the Commission, before making its final decision or order, shall afford the party or parties an opportunity for oral argument. When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission; provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(1975, c. 243, ss. 9, 10; c. 867, s. 5.)

Editor's Note. — The first 1975 amendment substituted "panel of three commissioners" for "hearing division" in subsections (a), (b) and (c) and "panel" for "division" in subsection (a).

The second 1975 amendment added "or, in its

discretion, oral arguments in lieu thereof" at the end of subsection (a).

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (c) are set out.

§ 62-79. Final orders and decisions; findings; service; compliance.

Determination of "Fair Value". —

In adopting a rate of return of 7.55% for a telephone company, where the Commission devoted some 18 pages to reviewing and analyzing testimony and pertinent statutes and court decisions relating to its finding of fair value, the Commission did not err in failing to

make factual findings as to the cost of capital to the telephone company and the cost of, or a reasonable return on, either book or fair value equity to the company. *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-81. Special procedure in hearing and deciding rate cases. — (a) All proceedings for an increase in rates and all other rate proceedings declared to be general rate cases under G.S. 62-137 shall be set for hearing within six months of the institution or filing thereof, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions. The Commission shall hear such cases as provided in G.S. 62-60.1 and shall furnish a transcript of the evidence and testimony presented on the earliest practicable date after the taking thereof. The Commission shall require that briefs or oral arguments in such cases be submitted within 30 days after receipt of such transcripts, and the Commission shall render its decision in such cases within 60 days after submission of such briefs or arguments. All public utilities filing or applying for an increase in rates for electric, telephone, natural gas or water service shall notify their consumers of such filing by regular mail or by newspaper publication within 30 days thereafter, which notice shall state that any hearing on said filing shall be set

within six months of said filing date. Other public utilities shall give such notice in a manner to be prescribed by the Commission.

(b) In matters where the total annual revenue requested or where the total annual revenue increase requested is less than fifty thousand dollars (\$50,000), even though all or a substantial portion of the rate structure is being initially established or is under review, the chairman of the Commission may refer the matter to a panel of three commissioners or to a hearing commissioner or to a hearing examiner for hearing. (1963, c. 1165, s. 1; 1973, c. 1074; 1975, c. 45; c. 243, ss. 6, 9; c. 867, s. 6.)

Editor's Note.—

The first 1975 amendment deleted "Such cases shall be heard by the full Commission, and" at the beginning of the second sentence and substituted "on the earliest practicable date after the taking thereof" for "by the end of the second business day after the taking of each day of testimony" at the end of that sentence. The amendment also deleted former subsection (b), which provided for the referral by the chairman of the Commission of certain rate hearings to a division of the Commission, a hearing commissioner or a hearing examiner.

The second 1975 amendment designated as subsection (a) the section as amended by the first 1975 amendment, inserted "shall hear such cases as provided in G.S. 62-60.1 and" following "Commission" in the second sentence of that subsection, and added present subsection (b).

The third 1975 amendment substituted "briefs or oral arguments" for "briefs and oral arguments" near the beginning of the third sentence in subsection (a) and substituted "briefs or arguments" for "briefs and arguments" at the end of that sentence.

§ 62-82. Special procedure on application for certificate for generating facility; appeal from award order. — (a) Notice of Application for Certificate for Generating Facility; Hearing; Briefs and Oral Arguments. — Whenever there is filed with the Commission an application for a certificate of public convenience and necessity for the construction of a facility for the generation of electricity under G.S. 62-110.1, the Commission shall require the applicant to publish a notice thereof once a week for four successive weeks in a daily newspaper of general circulation in the county where such facility is proposed to be constructed and thereafter the Commission upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing to determine whether such certificate shall be awarded. Any such hearing must be commenced by the Commission not later than three months after the filing of such application, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions, except rate proceedings referred to in G.S. 62-81. Such applications shall be heard as provided in G.S. 62-60.1, and the Commission shall furnish a transcript of evidence and testimony submitted by the end of the second business day after the taking of each day of testimony. The Commission or panel shall require that briefs and oral arguments in such cases be submitted within 30 days after the conclusion of the hearing, and the Commission or panel shall render its decision in such cases within 60 days after submission of such briefs and arguments. If the Commission or panel does not, upon its own initiative, order a hearing and does not receive a complaint within 10 days after the last day of publication of the notice, the Commission or panel shall enter an order awarding the certificate.

(1975, c. 243, s. 7.)

Editor's Note. — The 1975 amendment substituted "as provided in G.S. 62-60.1" for "by

the full Commission" near the beginning of the third sentence of subsection (a) and inserted "or

panel" following "Commission" in four places in the fourth and fifth sentences of that subsection.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 5.

Review and Enforcement of Orders.

§ 62-90. Right of appeal; filing of exceptions.

(d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.
(e), (f) Repealed by Session Laws 1975, c. 391, s. 12, effective July 1, 1975. (1975, c. 391, s. 12.)

I. GENERAL CONSIDERATION.

Editor's Note. — The 1975 amendment substituted the present second sentence of subsection (d) for former provisions outlining the procedure for taking an appeal and repealed subsections (e) and (f), which also related to procedure on appeal.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1,

1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the other subsections were not changed by the amendment, they are not set out.

§ 62-91. Appeal docketed; title on appeal; priorities on appeal. — Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6; 1975, c. 391, s. 13.)

Editor's Note. — The 1975 amendment substituted "rules of appellate procedure" for "rules of the Court of Appeals" in the first and last sentences. A literal compliance with the language of the 1975 amendatory act would have required "appellate procedure" to be substituted for "the Court of Appeals" near the beginning of the last sentence of this section as well as at the end of that sentence; however, the codifiers have not followed the act literally, but have given it effect according to its obvious intent.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

§ 62-94. Record on appeal; extent of review. — (a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of appellate procedure, and any alleged irregularities in

procedures before the Commission, not shown in the record, shall be considered under the rules of appellate procedure.
(1975, c. 391, s. 14.)

I. GENERAL CONSIDERATION.

Editor's Note. —

The 1975 amendment substituted "appellate procedure" for "the Court of Appeals" in two places in subsection (a).

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Weighing of Evidence, etc. —

The credibility of the testimony was for the determination of the Commission. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

And Court May Not Find Facts, etc. —

A finding of fact or determination of what rates are reasonable by the Utilities Commission may not be reversed or modified by the reviewing court merely because the court would have reached a different finding or determination upon the evidence. State ex rel.

Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

Commission's Findings Are Conclusive, etc. —

Upon appeal, the rates fixed by the Utilities Commission, pursuant to this Chapter, are deemed prima facie just and reasonable, and all findings of fact supported by competent, material and substantial evidence are conclusive. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

And due account shall be taken of the rule of prejudicial error, etc. —

Subsection (c) requires the reviewing court to take due note of the rule of prejudicial error. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The authority of an appellate court to reverse or modify an order of the Utilities Commission, or to remand the matter to the Commission for further proceedings, is limited to that specified in this section, which includes the authority to reverse or modify such order on the ground that it violates a constitutional provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

ARTICLE 6.

The Utility Franchise.

§ 62-110. Certificate of convenience and necessity.

Applied in State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities.

(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In

developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan.

(d) In acting upon any petition for the construction of any facility for the generation of electricity, the Commission shall take into account the applicant's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical electric service.

(e) As a condition for receiving such certificate the applicant shall file an estimate of construction costs in such detail as the Commission may require. The Commission shall hold a public hearing on each such application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that such construction will be consistent with the Commission's plan for expansion of electric generating capacity.

(f) The Commission shall maintain an ongoing review of such construction as it proceeds and the applicant shall submit each year during construction a progress report and any revisions in the cost estimates for the construction. (1965, c. 287, s. 2; 1975, c. 780, s. 1.)

Editor's Note. — The 1975 amendment added subsections (c) through (f).

the amendment, only subsections (c) through (f) are set out.

As the rest of the section was not changed by

ARTICLE 7.

Rates of Public Utilities.

§ 62-130. Commission to make rates for public utilities.

The Utilities Commission, not the courts, has been given authority to determine the adequacy of a public utility's service and the

rates to be charged therefor. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-131. Rates must be just and reasonable; service efficient.

Duty and Authority of Commission. —

The Utilities Commission, not the Supreme Court or the Court of Appeals, has been given the authority to determine the adequacy of a public utility's service and the rates to be charged therefor. *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 24 N.C. App. 327, 210 S.E.2d 543 (1975).

Duty of Utility to Render Adequate Service. —

It was not the intent of the legislature to require the Commission to fix rates without any

regard to the quality of the service rendered by the utility and thus to assure a "complaint monopoly" a "fair return upon the fair value of its properties" while it persists in rendering mediocre service and turns a deaf ear both to customer complaints and to Commission orders for improvement. On the contrary, the quality of the service rendered is, necessarily, a factor to be considered in fixing the "just and reasonable" rate therefor. *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 285 N.C. 671, 208 S.E.2d 681 (1974).

§ 62-133. How rates fixed.

(c) The public utility's property and its fair value shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the value of the public utility's property used and useful in providing the service rendered to the public within this State which is based upon circumstances and events occurring up to the time the hearing is closed. (1975, c. 184, s. 2.)

I. GENERAL CONSIDERATION.

Editor's Note. —

The 1975 amendment rewrote the second sentence of subsection (c). The amendatory act provides that it shall not affect pending litigation.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Purpose of Chapter. —

The provisions of this Chapter designed to assure the utility of adequate revenues are in the nature of corollaries to the basic proposition that the public is entitled to adequate service at reasonable rates and safeguards against administrative action which would violate constitutional protections by confiscation of the utility's property. Without such assurance, the owners of capital would not invest in the utility's bonds or stock and the utility could not provide the plant necessary for the rendering of adequate service. *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 285 N.C. 671, 208 S.E.2d 681 (1974).

The primary purpose of this Chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a

reasonable charge. *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 285 N.C. 671, 208 S.E.2d 681 (1974).

Applied in *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d 319 (1974).

II. UTILITIES COMMISSION.

The findings of the Commission, when supported, etc. —

When a telephone company offered substantial evidence to show that there was no significant excess plant margin, this conflict of evidence presented a question of fact upon which the finding of the Commission was conclusive and could not be disturbed by the reviewing court, even though the court might have reached a different conclusion thereon. *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 285 N.C. 671, 208 S.E.2d 681 (1974).

Commission is to determine the credibility of evidence before it, even though such evidence be uncontradicted by another witness. *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 24 N.C. App. 327, 210 S.E.2d 543 (1975).

III. FIXING OF RATES.

A. In General.

Objective of Rate-Making. —

At best, the result of the complex rate-making procedure is an approximation of the objective of fixing a fair rate of return on fair value. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

Manner of Arriving at Rate. —

Rates charged by one telephone company do not, per se, constitute a standard by which to determine the reasonableness of those of another company, even when the territories served and operating conditions are similar. The probative value of such evidence is slight at best, but where there is evidence of substantial similarity of conditions, evidence of comparative rates may have some relevancy for use as a guide to the limits of the zone of reasonableness. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

B. Rate Base — Value of Investments, Property, etc.

Commission not required to include contributed plant in applicant's fair value rate base. State ex rel. Utilities Comm'n v. Heater Util., Inc., 26 N.C. App. 404, 216 S.E.2d 487 (1975).

C. Operating Expenses and Working Capital.

Disallowance of a contributions item was a proper exercise of the Commission's discretion in determining the telephone company's reasonable operating expenses. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

A \$414,111 understatement of working capital, which in turn caused an identical understatement of the fair value of Southern Bell's property used and useful, was not sufficiently prejudicial to disturb the order of the Commission. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

Taxes constitute an operating expense item. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

D. Rate of Return.

Fair Rate of Return Test. —

Since the rate of return on the fair value of its properties which will enable a utility company to attract the capital it needs (the essence of the Bluefield test) cannot be pinpointed with

absolute accuracy, it is universally recognized that, for a utility rendering acceptable service, there is a zone of reasonableness extending over a few hundredths of one percent, within which a rate of return fixed by a regulatory commission will not be disturbed by the courts. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The rate-making procedure prescribed in this section is designed to yield to the utility a return which will meet the test laid down in *Bluefield Waterworks & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923). State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

V. OTHER FACTS.

B. Quality and Adequacy of Service.

Commission Must Consider Quality of Service. —

It was not the intent of the legislature to require the Commission to fix rates without any regard to the quality of the service rendered by the utility and thus to assure a "complacent monopoly" a "fair return upon the fair value of its properties" while it persists in rendering mediocre service and turns a deaf ear both to customer complaints and to Commission orders for improvement. On the contrary, the quality of the service rendered is, necessarily, a factor to be considered in fixing the "just and reasonable" rate therefor. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

When, upon substantial evidence, a public utility is found to be rendering grossly inadequate service, due to bad management and managerial indifference, and the rates presently charged by it yield a return sufficient to pay the interest on its indebtedness and a substantial dividend upon its stock, but less than that which would be deemed a fair return upon the fair value of its properties were the service adequate, the Utilities Commission may lawfully deny it authority to increase its rates for such service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

Section 62-133 lays down the procedure by which the Commission is to fix rates which will enable the utility "by sound management" to pay all of its costs of operation, including maintenance, depreciation and taxes, and have left a fair return upon the fair value of its properties, but this must be applied in the light of the provisions of this Chapter relating to the

duty of the utility to render adequate service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

Inadequacy of service due not to the condition of the properties but to inefficient personnel, bad management and the indifference of a "complacent monopoly" is an entirely different matter; this does not relate to the value of the properties, but it does relate to the value of the service and to the reasonableness of the rates proposed to be charged therefor. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

Subtraction for Consistently Poor Service. —

In accord with original. See State ex rel.

Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

In computing the fair value of a telephone company's property, the court's consideration of the inadequacy of telephone service provided is not the imposition of a penalty; it is merely the consideration of a factor in the computation of the "fair value" of the properties. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The Bluefield test assumes reasonably good service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

§ 62-134. Change of rates; notice; suspension and investigation.

(e) Notwithstanding the provisions of this Article, upon application by any public utility for permission and authority to increase its rates and charges based solely upon the increased cost of fuel used in the generation or production of electric power, the Commission shall suspend such proposed increase for a period not to exceed 90 days beyond the date of filing of such application to increase rates. Upon motion of the Commission or application of any person having an interest in said rate, the Commission shall set for hearing any request for decrease in rates or charges based solely upon a decrease in the cost of fuel. The Commission shall promptly investigate applications filed pursuant to provisions of this subsection and shall hold a public hearing within 30 days of the date of the filing of the application to consider such application, and shall base its order upon the record adduced at the hearing, such record to include all pertinent information available to the Commission at the time of hearing. The order responsive to an application shall be issued promptly by the Commission but in no event later than 90 days from the date of filing of such application. A proceeding under this subsection shall not be considered a general rate case. All monthly fuel adjustment rate increases based solely upon the increased cost of fuel, as to each public utility, as presently approved by the Commission shall fully terminate effective September 1, 1975, except that the same shall be earlier terminated as to each such public utility upon the effective date of any final order of the Commission under this section; provided, however, that the termination date of September 1, 1975, shall not apply to any public utility which has filed an application under this subsection on or before July 1, 1975, and where the Commission has not issued a final order by September 1, 1975. In any proceeding pursuant to this subsection, any person directly interested in the proceeding shall have a full right of intervention.

(f) The Commission may adopt rules prescribing the information and exhibits required to be filed with any applications, or tariff for an increase in utility rates, including but not limited to all of the evidence or proof through the end of the test period which the utility will rely on at any hearing on such increase, and the Commission may suspend such increase until such data, information or exhibits are filed, in addition to the time provided for suspension of such increase in other provisions of this Chapter. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1; 1971, c. 551; 1973, c. 1444; 1975, c. 243, s. 8; c. 510; c. 867, s. 7.)

Editor's Note.—

The first 1975 amendment added subsection (e).

The second 1975 amendment added subsection (f).

The third 1975 amendment added the last sentence in subsection (e).

As the rest of the section was not changed by

the amendments, only subsections (e) and (f) are set out.

The burden of proof is upon the utility seeking a rate increase to show that the proposed rates are just and reasonable. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

§ 62-155. Use of electricity during peak-demand periods. — (a) It is the policy of the State to conserve energy through efficient utilization of all resources.

(b) If the Utilities Commission after study determines that conservation of electricity and economy of operation for the public utility will be furthered thereby, it shall direct each electric public utility to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day. In addition, each public utility shall, insofar as practicable, investigate, develop, and put into service, with approval of the Commission, procedures and devices that will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload its system.

(c) The Commission itself shall inform the general public as to the necessity for controlling demands for electricity at peak periods and shall require the several electric public utilities to carry out its program of information and education in any reasonable manner.

(d) The Commission shall study the feasibility of and, if found to be practicable, just and reasonable, make plans for the public utilities to bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the utility system. No order regarding such rates shall be issued by the Commission without a prior public hearing, whether in a single electric utility company rate case or in general orders relating to two or more or all electric utilities.

(e) No Class A electric public utility shall apply for any rate change unless it files at the time of the application a report of the probable effect of the proposed rates on peak demand on it and its estimate of the kilowatt hours of electricity that will be used by its customers during the ensuing one year and five years from the time such rates are proposed to become effective. (1975, c. 780, s. 2.)

§§ 62-156 to 62-159: Reserved for future codification purposes.

ARTICLE 8.

Securities Regulation.

§ 62-161. Assumption of certain liabilities and obligations to be approved by Commission; refinancing of public utility securities.

The regulation and control by this State over the issuance of securities by a multistate foreign corporation engaged in interstate commerce, which the attempted enforcement by

the Commission of this Article was held necessarily to entail, is to impose such an undue burden on interstate commerce as to make such regulation and control constitutionally beyond the State's power to enforce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d 319 (1974).

The Commission may not lawfully require a

multistate foreign corporation engaged in interstate commerce to comply with the provisions of Article 8 and issue securities in the future only after first making application to and obtaining an order from the Commission authorizing such issue. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d 319 (1974).

§ 62-171. Commission may act jointly with agency of another state where public utility operates.

The regulation and control by this State over the issuance of securities by a multistate foreign corporation engaged in interstate commerce, which the attempted enforcement by the Commission of this Article was held necessarily to entail, is to impose such an undue burden on interstate commerce as to make such regulation and control constitutionally beyond the State's power to enforce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d 319 (1974).

The Commission may not lawfully require a multistate foreign corporation engaged in interstate commerce to comply with the provisions of Article 8 and issue securities in the future only after first making application to and obtaining an order from the Commission authorizing such issue. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771, cert. granted, 286 N.C. 214, 209 S.E.2d 319 (1974).

ARTICLE 12.

Motor Carriers.

§ 62-266. Interstate carriers.

(c) Any person operating a for-hire motor vehicle in interstate commerce over the highways of this State without having properly registered with the Utilities Commission, its respective exempt operation, or a copy of its interstate authority and each vehicle operated in this State shall be subject to a penalty of twenty-five dollars (\$25.00), which shall be added to the registration fees provided in G.S. 62-300, and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and investigators of the Utilities Commission in accordance with rules and regulations duly adopted by the Utilities Commission before said vehicle shall be permitted to operate further upon the highways of North Carolina.

(1975, c. 447, s. 2.)

Editor's Note. — The 1975 amendment rewrote that part of subsection (c) that precedes the words "and said penalty" near the middle of the subsection.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

ARTICLE 14.

Fees and Charges.

§ 62-300. Particular fees and charges fixed; payment. — (a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate or new permit for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.
- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by a motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities.
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or

utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.

- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service from a public utility.
 - (8) One dollar (\$1.00) for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the Commission, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.
 - (9) Thirty cents (30¢) for each page (8½ x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
 - (10) Twenty cents (20¢) for each page reproduced by photostatic or similar process and for each page of an order which can be made available without the necessity of copying or reproduction.
 - (11) Twenty-five dollars (\$25.00) for the filing with the Commission of the interstate motor carrier operating authority or registration of interstate exempt operation of every motor carrier operating into, from within, or through North Carolina and filed with the Commission under the provisions of G.S. 62-266 and five dollars (\$5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.
 - (12) One dollar (\$1.00) for the registration with the Commission of each motor vehicle operated into, from, within, or through North Carolina by interstate carriers and registered with the Commission under the provisions of G.S. 62-266, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.
- (1975, c. 447, s. 1.)

Editor's Note. — The 1975 amendment, in subsection (a), inserted "in accordance with the classification of utilities as provided in rules and regulations of the Commission" in the introductory paragraph, rewrote subdivisions (2), (3), (5) and (6), increased the fee in subdivision (4) from \$25.00 to \$100.00, increased the reregistration fees in subdivisions (8) and

(12) from 25 cents to \$1.00, eliminated subdivision (10), relating to fees for copies and for certification of copies of papers, orders, certificates and other records, and redesignated former subdivisions (11) through (13) as (10) through (12).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina

November 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1975 Supplement to the General Statutes of North Carolina was prepared and published by the Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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